

THOMAS FILLEBROWN.

[To accompany Bill H. R. No. 91.]

---

FEBRUARY 3, 1859.—Referred to the Committee of Claims.

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The COURT OF CLAIMS submitted the following

## REPORT.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled :*

The Court of Claims respectfully presents the following documents as the report in the case of

THOMAS FILLEBROWN *vs.* THE UNITED STATES.

1. The petition of the claimant and amended petition.
2. Report of the case of United States *vs.* Thomas Fillebrown, jr., filed by claimant as evidence, and transmitted to House of Representatives.
3. Petitioner's brief.
4. United States Solicitor's brief.
5. Opinion of the Court in favor of the claim.
6. Bill allowing claimant four hundred and thirty dollars.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 3d day of February,  
[L. S.] A. D. 1857.

SAM'L H. HUNTINGTON,  
*Chief Clerk Court of Claims.*

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*To the Court of Claims :*

The petition of the undersigned, a citizen of the United States, now and for the last thirty-five years a resident of the city of Washington, respectfully represents: That in the year 1825 he was a clerk in the Navy Department, at a salary of one thousand dollars per annum. In the month of November of that year he was selected by the commissioners of navy hospitals, composed *ex officio* of the Secretaries of the Navy, Treasury, and War Departments, to act as their secretary, for which service a compensation of two hundred and fifty dollars per

annum was allowed him. Subsequently he was called on to disburse certain moneys in the construction of navy hospital buildings. For this extra service he charged and was allowed a commission of one per centum. In the year 1829 he was discharged from all his employments, and suit instituted against him to recover the sums thus charged and received as commissions on his expenditures. The suit resulted in a verdict of the jury in his favor, on which the court entered a judgment, and in a certificate by the jury awarding him the sum of \$430. From this decision of the circuit court of the District of Columbia the government appealed to the Supreme Court of the United States, where the same was argued at the December term of 1832, and the judgment of the circuit court was affirmed. He then applied to the Secretary of the Navy for payment of the balance certified by the jury to be due him, and was informed by that functionary that the same could not be paid without the sanction of, or an appropriation by, Congress. Thus situated, he appealed to Congress by petition to the Senate, which body passed a bill for his relief, which bill was rejected by the House of Representatives. He again petitioned the 24th Congress, 1st session, upon which there appears to have been no action. At the second session a favorable report was made upon his claim. At the second session of the 25th Congress he again petitioned, and upon which a favorable report was made; and also at the third session of the same Congress, with the same result. At the first session of the 26th Congress he renewed his petition, and a bill for his relief was passed by the House, but was indefinitely postponed in the Senate.

A few days after his case was decided by the Supreme Court, the Attorney General (now Chief Justice Taney) addressed a letter to the Secretary of the Navy, recommending that the balance certified by the jury to be due your petitioner should be paid; which letter may be found in the volume of "Opinions of the Attorneys General of the United States, published in 1841, under the inspection of Henry D. Gilpin," page 900, copy of which is hereto appended. He also refers the honorable court to the opinion of the Supreme Court in the case, found in Peters' Report, vol. 7, pp. 42-50.

He has not assigned this claim, or any part or portion of it, to any person or persons whatever, nor is it his intention or purpose so to do, and prays such measures may be taken by the Court as will secure its payment eventually to himself or his heirs.

And, as in duty bound, he will ever pray.

THOMAS FILLEBROWN.

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ATTORNEY GENERAL'S OFFICE, *March 19, 1833.*

SIR: In reply to your inquiry concerning the claim of Mr. Fillebrown, I have the honor to send you a copy of the opinion given by the Supreme Court, at the late term, in the case of the United States against him: The Court have decided that, under the agreement set forth in the testimony of Mr. Southard, Mr. Fillebrown was entitled to such commission as the jury should find to be reasonable and con-

formable to the general usage of the government and its departments in the like cases.

It appears by the verdict that the jury must have found the contract to have been as proved by Mr. Southard; and in that state of the fact Mr. Fillebrown is, by the opinion of the Court, entitled to the per centage and salary claimed in his account, provided the commissioner's charges conform to the amount at that time usually allowed by the government in like cases. I think, therefore, that he is entitled to receive out of the navy hospital fund the amount due him, adjusting his account according to the rights and obligations of the parties, as decided by the Court.

R. B. TANEY.

The SECRETARY OF THE NAVY.

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IN THE UNITED STATES COURT OF CLAIMS.

THOMAS FILLEBROWN *vs.* THE UNITED STATES.

*Amended Petition.*

Thomas Fillebrown, by way of amendment to his original petition hereinbefore filed, and in order to set forth more specifically the action had upon his claim while pending before Congress, in obedience to the rules prescribed by this Court, respectfully presents:

That after he was dismissed from his employment by the "commissioners of navy hospitals," say about the month of May or June, 1829, he was arrested by the government, charged with being a defaulter, and required to give bail in the sum of \$5,000 to keep his body from being lodged in prison.

The suit brought against him by the government being slow in its progress, and not likely soon to be tried; and deprived of his accustomed employment, besides his character and reputation resting under charges degrading to him as a man; and feeling also conscious that *he was not a defaulter*, but, on the contrary, that the government justly owed him; and wishing to hasten a final determination of the matter, as well as to relieve himself of the false imputations and charges under which he labored, which greatly obstructed his usefulness to himself and a dependent family, he was advised to and did petition to Congress for a thorough investigation of his official transactions, with a prayer to allow him such sum as might appear equitable and just, upon the same principle that had been allowed others who had performed service similar to his own.

But the government refused to permit Congress to dispose of the matter, and forced him to encounter and defend its suit at law in the United States circuit court for the District of Columbia. He thereupon, having no other alternative, prepared for his defence, and, pleading as an offset his claim for his services rendered, and which had been allowed by the "commissioners" but refused by the Fourth Auditor, asked for a judgment in his favor. The cause in due time came on for a hearing, when the proofs, *pro* and *con*, were submitted to a select jury, who ren-

dered a verdict in his favor for the sum of \$430, as in his original petition stated.

When he first petitioned to Congress he claimed and expected to get a much larger sum than was allowed him by the jury; and therefore, after the rendition of the verdict in his favor, to wit, in the month of April, 1832, he again petitioned Congress for the payment of the verdict, and for the additional amount thereto, not allowed him by the jury, but asked for in his petition first presented, in January, 1830.

Upon this last petition various reports were made for and two against his claim as presented, and a bill was more than once passed in one or the other branches of Congress for his relief, the last of which, having passed in the House, was indefinitely postponed in the Senate.

He presents herewith an extract from the proceedings of the two houses, marked A No. 1 and A No. 2, which will be found corroborative of his statements now made.

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### A No. 1.

#### *Extracts from the Journals of the Senate.*

1st Session 21st Congress.

MONDAY, *January 18, 1830.*

\* \* \* \* \*

Mr. Holmes presented the memorial of Thomas Fillebrown, junior, praying for an equitable settlement of his accounts for commissions on disbursements made by him from the navy hospital fund by order of the commissioners.

*Ordered,* That the petition and memorial last mentioned be referred to the Committee on the Judiciary.

\* \* \* \* \*

TUESDAY, *February 23, 1830.*

\* \* \* \* \*

On motion by Mr. Rowan,

*Ordered,* That the Committee on the Judiciary be discharged from the consideration of the memorials of Thomas F. Gordon and Jesper Harding and Thomas Fillebrown.

\* \* \* \* \*

1st Session 22d Congress.

TUESDAY, *April 3, 1832.*

\* \* \* \* \*

Mr. Sprague presented the petition of Thomas Fillebrown, jr., late disbursing agent of the board of commissioners of navy hospitals, praying for additional allowances for his services; and

*Ordered,* That it be referred to the Committee on the Judiciary.

\* \* \* \* \*



FRIDAY, *April 6, 1832.*

\* \* \* \* \*

On motion by Mr. Marcy,

*Ordered*, That the Committee on the Judiciary be discharged from the further consideration of the petition of Thomas Fillebrown, jr.

\* \* \* \* \*

1st Session 23d Congress.

WEDNESDAY, *December 18, 1833.*

\* \* \* \* \*

Mr. Sprague presented the petition of Thomas Fillebrown, jr., praying for an additional allowance for disbursing the navy hospital fund.

\* \* \* \* \*

*Ordered*, That the four petitions last mentioned be referred to the Committee on Claims.

\* \* \* \* \*

TUESDAY, *January 7, 1834.*

\* \* \* \* \*

Mr. Bell, from the same committee, to whom was referred the memorial of Thomas Fillebrown, jr., made a report, accompanied by a bill for his relief. The bill was read; and

*Ordered*, That it pass to a second reading, and that the report be printed.

\* \* \* \* \*

FRIDAY, *April 4, 1834.*

\* \* \* \* \*

On motion by Mr. Sprague,

The Senate resumed, as in Committee of the Whole, the bill for the relief of Thomas Fillebrown, jr., and no amendment having been proposed, it was reported to the Senate; and

*Ordered*, That it be engrossed and read a third time.

\* \* \* \* \*

MONDAY, *April 7, 1834.*

\* \* \* \* \*

The bill for the relief of Thomas Fillebrown, jr.,

\* \* \* \* \*

having been reported by the committee correctly engrossed, were severally read the third time; and

*Resolved*, That they pass, and that their respective titles be as aforesaid.*Ordered*, That the Secretary request the concurrence of the House of Representatives in said bills.

\* \* \* \* \*

MONDAY, *June 30, 1834.*

\* \* \* \* \*

A message from the House of Representatives, by Mr. Franklin, their Clerk.

*Mr. President:* The House of Representatives have rejected bills from the Senate of the following titles, viz :

\* \* \* \* \*

An act for the relief of Thomas Fillebrown, jr.

\* \* \* \* \*

2d Session 23d Congress.

THURSDAY, *January 15, 1835.*

\* \* \* \* \*

On motion by Mr. Bell,

*Ordered,* That Thomas Fillebrown, jr., have leave to withdraw from the files of the last session his petition and papers.

\* \* \* \* \*

2d Session 25th Congress.

THURSDAY, *April 5, 1838.*

\* \* \* \* \*

A message from the House of Representatives, by Mr. Franklin, their Clerk.

*Mr. President:*

\* \* \* \* \*

They have passed a bill (H. R. 81) entitled " An act for the relief of Thomas Fillebrown, jr.," in which they request the concurrence of the Senate.

The last mentioned bill from the House of Representatives was read the first and second time, by unanimous consent, and referred to the Committee on Claims.

\* \* \* \* \*

TUESDAY, *May 22, 1838.*

\* \* \* \* \*

Mr. Merrick, from the Committee on Claims, to whom was referred the bill (H. R. 81) for the relief of Thomas Fillebrown, jr., reported it without amendment.

\* \* \* \* \*

SATURDAY, *July 7, 1838.*

\* \* \* \* \*

The Senate proceeded to consider, as in Committee of the Whole, the bill (H. R. 81) for the relief of Thomas Fillebrown, jr.; and

On motion by Mr. Buchanan,

*Ordered,* That it lie on the table.

\* \* \* \* \*

1st Session 26th Congress.

MONDAY, *March 30*, 1840.

\* \* \* \* \*

A message from the House of Representatives, by Mr. Garland, their Clerk.

*Mr. President:* The House of Representatives have passed bills of the following titles :

\* \* \* \* \*

H. R. 44. "An act for the relief of Thomas Fillebrown, jr."

\* \* \* \* \*

The said bills from the House of Representatives were severally read the first and second time, by unanimous consent.

*Ordered,* \* \* \* \* \*

that bills numbered from 28 to 48 be referred to the Committee on Claims

\* \* \* \* \*

TUESDAY, *March 31*, 1840.

\* \* \* \* \*

Mr. Hubbard, from the Committee on Claims, to whom was referred the bill (H. R. 44) for the relief of Thomas Fillebrown, jr., reported it without amendment.

Mr. Hubbard also submitted a special report on the subject, which was ordered to be printed.

\* \* \* \* \*

FRIDAY, *April 24*, 1840.

\* \* \* \* \*

The Senate proceeded to consider, as in Committee of the Whole, the bill (H. R. 44) for the relief of Thomas Fillebrown, jr.; and

On motion by Mr. Hubbard,

*Ordered,* That it lie on the table.

\* \* \* \* \*

MONDAY, *April 27*, 1840.

\* \* \* \* \*

The Senate resumed, as in Committee of the Whole, the bill (H. R. 44) for the relief of Thomas Fillebrown, jr.

On motion by Mr. Hubbard,

That the further consideration thereof be postponed indefinitely ;  
It was determined in the affirmative—Yeas 23, nays 11.

\* \* \* \* \*

So it was

*Resolved,* That this bill be postponed indefinitely.

*Ordered,* That the Secretary notify the House of Representatives accordingly.

\* \* \* \* \*

2d Session 27th Congress.

TUESDAY, *December 14, 1841.*

\* \* \* \* \*

Mr. Evans presented the memorial of Thomas Fillebrown, jr., praying the payment of a balance ascertained to be due to him, as agent for the disbursement of the naval hospital fund, by a judgment in his favor, in a suit instituted against him by the United States ; which was referred to the Committee on Claims.

\* \* \* \* \*

TUESDAY, *February 8, 1842.*

\* \* \* \* \*

Mr. Phelps, from the Committee on Claims, to whom was referred the memorial of Thomas Fillebrown, jr., submitted a report, accompanied by a bill (S. 158) for his relief.

The bill was read, and passed to the second reading.

*Ordered*, That the report be printed.

\* \* \* \* \*

WEDNESDAY, *June 8, 1842.*

\* \* \* \* \*

The Senate proceeded to consider, as in Committee of the Whole, the bill (S. 158) for the relief of Thomas Fillebrown, jr.; and

On motion by Mr. Phelps,

*Ordered*, That it lie on the table.

\* \* \* \* \*

3d Session 27th Congress.

THURSDAY, *December 15, 1842.*

\* \* \* \* \*

On motion by Mr. Evans,

*Ordered*, That the petition of Thomas Fillebrown, jr., on the files of the Senate, be referred to the Committee on Claims.

\* \* \* \* \*

WEDNESDAY, *December 21, 1842.*

\* \* \* \* \*

Mr. Phelps, from the Committee on Claims, to whom was referred the petition of Thomas Fillebrown, jr., submitted a report, accompanied by a bill (S. 37) for his relief ; which was read, and passed to a second reading.

\* \* \* \* \*

WEDNESDAY, *December 28, 1842.*

\* \* \* \* \*

The bill (S. 37) for the relief of Thomas Fillebrown was read the second time, and considered as in Committee of the Whole.

On motion by Mr. Phelps,  
*Ordered*, That it lie on the table.

\* \* \* \* \*

1st Session 28th Congress.

MONDAY, *December 11, 1843.*

\* \* \* \* \*

On motion by Mr. Evans,  
*Ordered*, That the petition of Thomas Fillebrown, jr., on the files  
of the Senate, be referred to the Committee on Claims.

\* \* \* \* \*

THURSDAY, *March 21, 1844.*

\* \* \* \* \*

Mr. Haywood, from the Committee on Claims, to whom was referred  
the memorial of Thomas Fillebrown, submitted an adverse report ;  
which was ordered to be printed.

\* \* \* \* \*

MONDAY, *April 15, 1844.*

\* \* \* \* \*

The Senate proceeded to consider the report of the Committee on  
Claims on the petition of Thomas Fillebrown, jr. ; and,

On motion by Mr. Evans,  
*Ordered*, That it lie on the table.

\* \* \* \* \*

2d Session 30th Congress.

WEDNESDAY, *December 6, 1848.*

\* \* \* \* \*

On motion by Mr. Phelps,  
*Ordered*, That Thomas Fillebrown have leave to withdraw his pe-  
tition and papers.

\* \* \* \* \*

FRIDAY, *December 22, 1848.*

\* \* \* \* \*

On motion by Mr. Phelps,  
*Ordered*, That the petition of Thomas Fillebrown, on the files of  
the Senate, be referred to the Committee on the Judiciary.

\* \* \* \* \*

## A No. 2.

*Extracts from the Journals of the House of Representatives.*

1st Session 23d Congress.

MONDAY, April 7, 1834.

\* \* \* \* \*

A message from the Senate, by Mr. Lowrie, their Secretary :

*Mr. Speaker* : The Senate have passed bills of the following titles,  
to wit :

\* \* \* \* \*

No. 47. An act for the relief of Thomas Fillebrown, jr.

\* \* \* \* \*

WEDNESDAY, April 9, 1834.

\* \* \* \* \*

Bills from the Senate of the following titles, viz :

\* \* \* \* \*

No. 47. An act for the relief of Thomas Fillebrown, jr.

\* \* \* \* \*

were severally read the first and second time, and referred.

\* \* \* \* \*

No. 47. To the Committee of Claims.

\* \* \* \* \*

WEDNESDAY, April 30, 1834.

\* \* \* \* \*

Mr. Grennell, from the Committee of Claims, to whom was referred the bill from the Senate (No. 47) entitled "An act for the relief of Thomas Fillebrown, junior," reported the same without amendment.

*Ordered*, That the said bill be committed to a Committee of the Whole House to-morrow.

\* \* \* \* \*

SATURDAY, June 28, 1834.

\* \* \* \* \*

The House resolved itself into a Committee of the Whole House on bills from the Senate, and after some time spent therein, the Speaker resumed the chair, and Mr. John Y. Mason reported the said bills, as follows :

\* \* \* \* \*

No. 47. An act for the relief of Thomas Fillebrown, junior, without amendment.

\* \* \* \* \*

The bill from the Senate (No. 47) entitled "An act for the relief of Thomas Fillebrown, junior," was read the third time.

And after debate on the said bill,

The previous question was moved by Mr. Mann, of New York, and was demanded by a majority of the members present.



The said previous question was put, viz: Shall the main question be now put?

And passed in the affirmative.

The main question was then put, viz: Shall the bill pass?

And passed in the affirmative.

\* \* \* \* \*

NOTE.—This bill is entered on the Journal as having passed the House of Representatives. It is an error; the bill was *rejected*.

1st Session 24th Congress.

WEDNESDAY, *December 16, 1835.*

\* \* \* \* \*

Mr. Evans presented a memorial of Thomas Fillebrown, jr., of the city of Washington, praying for the passage of an act granting to him the amount of a certain judgment rendered in his favor for services as clerk in the Navy Department, together with costs of suit and interest upon the said judgment.

\* \* \* \* \*

*Ordered*, That the said petitions and memorials be referred to the Committee of Claims.

\* \* \* \* \*

2d Session 24th Congress.

MONDAY, *December 12, 1836.*

\* \* \* \* \*

The undermentioned petitions and memorials, heretofore presented, were again presented and referred to the Committee of Claims, viz:

By Mr. Evans: The memorial of Thomas Fillebrown, jr., presented December 16, 1835.

\* \* \* \* \*

THURSDAY, *March 2, 1837.*

\* \* \* \* \*

Mr. Grennell, from the Committee of Claims, made a report on the petition of Thomas Fillebrown, accompanied by a bill (No. 968) for his relief; which bill was read the first and second time, and committed to a Committee of the Whole House to day.

\* \* \* \* \*

2d Session 25th Congress.

MONDAY, *December 11, 1837.*

\* \* \* \* \*

On motion, it was

*Ordered*, That the several memorials and petitions presented to the House of Representatives at the last Congress, and upon which favorable reports were made, and on which the House did not finally act,

be again referred to the committees to which said memorials and petitions were heretofore severally referred.

Under this order, the petitions of the under-mentioned persons were referred to the Committee of Claims, viz :

*	*	*	*	*	*	*	*
Thomas Fillebrown, jr.							
*	*	*	*	*	*	*	*

THURSDAY, *December 14*, 1837.

*	*	*	*	*	*	*	*
Mr. Whittlesey, of Ohio, from the Committee of Claims, reported							
sundry bills, to wit :							

*	*	*	*	*	*	*	*
No. 81. A bill for the relief of Thomas Fillebrown, jr.							
*	*	*	*	*	*	*	*

Which several bills, commencing with No. 15 and ending with No. 88, were read the first and second time, and were severally committed to a Committee of the Whole House to morrow.

*	*	*	*	*	*	*	*
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FRIDAY, *January 12*, 1838.

*	*	*	*	*	*	*	*
The House again resolved itself into a Committee of the Whole							
House on sundry bills, viz :							

*	*	*	*	*	*	*	*
and after some time spent in Committee of the Whole House, the							
Speaker resumed the chair, and Mr. Calhoun, of Massachusetts, re-							
ported that the committee had made some progress on bills No. 81							
and 91, and directed him to ask leave to sit again thereon						*	*

*	*	*	*	*	*	*	*
<i>Ordered</i> , That the Committee of the Whole House have leave to							
sit again on bills No. 81 and 91.							

*	*	*	*	*	*	*	*
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SATURDAY, *March 31*, 1838.

*	*	*	*	*	*	*	*
The House resolved itself into the Committee of the Whole House							
on sundry bills, viz :							

*	*	*	*	*	*	*	*
No. 81. A bill for the relief of Thomas Fillebrown, jr.							
*	*	*	*	*	*	*	*

And after some time spent in committee, the Speaker resumed the chair, and Mr. Lyon reported bill No. 81 without amendment, \*

*	*	*	*	*	*	*	*
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*Ordered*, that bill No. 81, for the relief of Thomas Fillebrown, jr., be engrossed, and read a third time on Monday next.

3d Session 25th Congress.

FRIDAY, *December 21, 1838.*

\* \* \* \* \*  
Mr. Chambers, from the Committee of Claims, reported several bills, viz :  
\* \* \* \* \*

No. 900. A bill for the relief of Thomas Fillebrown, jr., accompanied by a report in writing in each case ; which bills were severally read the first and second time and committed to a Committee of the Whole House to-morrow.  
\* \* \* \* \*

FRIDAY, *February 1, 1839.*

\* \* \* \* \*  
The House resolved itself into a Committee of the Whole House on sundry bills, viz :  
\* \* \* \* \*

No. 900. A bill for the relief of Thomas Fillebrown.

\* \* \* \* \*  
And after some time spent in Committee of the Whole House, the Speaker resumed the chair, and Mr. Lincoln reported as follows :  
That on Nos. \* \* \* \* \* 900 \* \* \* \*

the Committee had made progress, and directed him to ask leave to sit again thereon.  
\* \* \* \* \*

*Ordered,* That the Committee of the Whole House have leave to sit again on the bills on which progress has been reported.  
\* \* \* \* \*

1st Session 26th Congress.

SATURDAY, *January 4, 1840.*

\* \* \* \* \*  
Under the general order of this day, the petitions and papers of the under-mentioned persons were referred to the Committee of Claims, viz :  
\* \* \* \* \*

Thomas Fillebrown, jr.

\* \* \* \* \*

SATURDAY, *February 29, 1840.*

\* \* \* \* \*  
Mr. Giddings, from the Committee of Claims, reported sundry bills, viz :

No. 44. A bill for the relief of Thomas Fillebrown, jr.

\* \* \* \* \*  
accompanied by a report in each case ; which bills were severally read the first and second times, and committed to a Committee of the Whole House to-morrow.  
\* \* \* \* \*

FRIDAY, *March 13, 1840.*

\* \* \* \* \*

The House resolved itself into a Committee of the Whole House on sundry bills, viz :

\* \* \* \* \*

No. 44. A bill for the relief of Thomas Fillebrown; and, after some time spent in Committee of the Whole House, the Speaker resumed the chair, and Mr. Davee reported that the committee had, according to order, had the said bill under consideration, and finding itself without a quorum had risen, and directed him to report that fact to the House.

\* \* \* \* \*

FRIDAY, *March 20, 1840.*

\* \* \* \* \*

The House resolved itself into a Committee of the Whole House on sundry bills, viz :

\* \* \* \* \*

No. 44. A bill for the relief of Thomas Fillebrown.

\* \* \* \* \*

And after some time spent in Committee of the Whole House, the Speaker resumed the chair, and Mr. Davee reported as follows :

\* \* \* \* \*

That Nos. \* \* \* 44 \* \* \*  
he was directed to report to the House without amendment.

\* \* \* \* \*

SATURDAY, *March 21, 1840.*

\* \* \* \* \*

The House proceeded to the consideration of the bill (No. 44) for the relief of Thomas Fillebrown, junior, and the question was put that the bill be engrossed and read a third time.

And it passed in the affirmative—Yeas 80; nays 62.

\* \* \* \* \*

*Ordered,* That the bill be read a third time to-day.

\* \* \* \* \*

SATURDAY, *March 28, 1840.*

\* \* \* \* \*

An engrossed bill (No. 44) entitled "An act for the relief of Thomas Fillebrown, junior," was read the third time.

And, after debate, the previous question was moved by Mr. A. Smith, was demanded by a majority of the members, and put, viz : Shall the main question be now put?

And it passed in the affirmative.

The main question was then put, viz : Shall the bill pass?

And passed in the affirmative—Yeas 74; nays 63.

\* \* \* \* \*

*Ordered,* That the Clerk request the concurrence of the Senate in the said bill.

\* \* \* \* \*

WEDNESDAY, *April 29*, 1840.

\* \* \* \* \*

A message from the Senate, by Mr. Dickins, their Secretary :

*Mr. Speaker :* \* \* \* \* \*

\* \* \* \* \*

The Senate have *postponed indefinitely* bills of this House of the following titles :

\* \* \* \* \*

No. 44. An act for the relief of Thomas Fillebrown.

\* \* \* \* \*

OFFICE HOUSE OF REPRESENTATIVES U. S.,  
*November 19*, 1855.

I hereby certify that the foregoing nine pages contain true extracts from the Journals of the House of Representatives relative to the petition of Thomas Fillebrown, junior.

Attest :

W. V. McKEAN,

*Chief Clerk, Office House of Representatives U. S.*

Your petitioner submits whether it is possible, or would be rational and just, that the government should now claim to reinvestigate his claim in its legislative department, after he having once applied to it for that purpose, and it refusing to do so, forced him to contest and try his claim in its judicial forums ; and after he had there succeeded, still further prosecuted his cause before the Supreme Court, where and when the judgment in his favor was affirmed.

He submits whether the government can claim the moral, legal, or constitutional right to subject him to the expense, burden, and delay of an action at law, of its own institution, which it prosecuted to a final appeal, thus depriving him of his just rights, and now, or at any time since the rendition of that verdict, require him to reprove his claim, in order and for no other reason than to comply with its assumed technical sovereignty, when he had once duly presented his claim for the action of the legislative department, which, as before stated, it declined to take charge of.

He submits, also, whether it is, or ever was, competent for Congress, as a legislative body, to review or reconsider the verdict of a jury, which is a question solely of judicial and not legislative cognizance ; and pleads in this behalf the 7th article of the amendment to the Constitution as absolutely prohibiting the same, and denies that either Congress or this Court, "sitting as a court of the United States," can, either in a legislative or judicial capacity, review the verdict of a sworn jury, or any facts tried by the same.

He claims that he is entitled to interest on the verdict from the date of its rendition, as a sum then liquidated and ascertained to be due in the most solemn and authentic manner known to our laws, which the government had no just grounds to refuse to pay ; but having, by its arbitrary and unjust procedure, deprived him of the use of his means, he claims that interest is justly, legally, and morally due, and should be paid just as much as the principal sum.



He therefore prays for a decree or award for the full amount of the principal sum of \$430, and interest from date of the verdict, on the 26th day of May, 1831, and for all just and equitable relief.

THOMAS FILLEBROWN.

Sworn to and subscribed before me, this first day of March, 1856.

HY. L. HARVEY,

*Justice of the Peace, Washington County, D. C.*

DISTRICT OF COLUMBIA, *set.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of May, being the second Monday of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States the fifty-fifth:

Present: William Cranch, chief judge; the Hon. Buckner Thruston and James S. Morsell, assistant judges; Henry Ashton, esq., marshal, and William Brent, clerk.

In the record of proceedings of the same court, among others, are the following, to wit:

THE UNITED STATES OF AMERICA }  
                                   *against* }  
     THOMAS FILLEBROWN, jr. }

Be it remembered that heretofore, to wit, on the twenty-third day of May, in the year of our Lord one thousand eight hundred and twenty-nine, the said United States of America, by Thomas Swann, esq., their attorney, prosecuted and sued forth out of the circuit court here the United States writ of *capias ad respondendum*, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

“DISTRICT OF COLUMBIA, *to wit*:

“*The United States of America to the marshal of the District of Columbia, greeting*:

“We command you that you take Thomas Fillebrown, jr., late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the first Monday of December next, to answer unto the United States of America in a plea of trespass on the case, and so forth.

“Hereof fail not at your peril, and have you then and there this writ.

“Witness, W. Cranch, esq., chief judge of our said court, at the city of Washington, the 22d day of May, anno Domini one thousand eight hundred and twenty-nine.

“Issued the 23d May, 1829.

“W. BRENT, *Clerk.*”

SWANN.



And the said United States, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said Thomas Fillebrown, jr., in the plea aforesaid, in form following, to wit:

“DISTRICT OF COLUMBIA, } to wit:  
*Washington county,*

“Thomas Fillebrown, jr., late of Washington county, gentleman, was attached to answer unto the United States of America, in a plea of trespass on the case, and so forth. And whereupon the said United States, by Thomas Swann, their attorney, complain, that whereas the said defendant, on the first day of January, in the year of our Lord one thousand eight hundred and twenty nine, at the county aforesaid, was indebted unto the said plaintiffs in the sum of two thousand and seven dollars and eighty-four cents, current money, for sundry matters and articles properly chargeable in an account, as by a particular account thereof herewith into court exhibited appears; and being so indebted the said defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised to the said plaintiffs to pay them the aforesaid sum of money when he should be thereto afterwards required.

“And whereas the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiffs in another sum of two thousand and seven dollars and eighty-four cents, like money, for divers goods, wares, and merchandises, by the said plaintiffs, before that time, sold and delivered to the said defendant, and at his special instance and request; and being so indebted the said defendant in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook and promised to the said plaintiffs to pay them the last aforesaid sum of money when he should be afterwards thereto required.

“And whereas afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, in consideration that the said plaintiffs, at the like instance and request of him the said defendant, had, before that time, sold and delivered to the said defendant, divers other goods, wares, and merchandises, the said defendant undertook and promised to the said plaintiffs to pay them so much money as they therefor reasonably deserved to have when he the said defendant should be thereunto afterwards requested; and the said plaintiffs in fact aver, that they therefor reasonably deserved to have of the said defendant, another sum of two thousand and seven dollars and eighty-four cents, like money, whereof the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, had notice.

“And whereas the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, was indebted unto the said plaintiffs in another sum of two thousand and seven dollars and eighty-four cents, like money, for the like sum of money by the said plaintiffs, and for the use of the said defendant, before that time paid, laid out, and expended, at the special instance and request of the said defendant, and for other money by the said plaintiffs before that time

lent and advanced to the said defendant at his special instance and request; and for other money by the said defendant before that time had and received to the use of the said plaintiffs; and being so indebted the said defendant in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, undertook and promised the said plaintiffs to pay them the said last mentioned sum of money, when afterwards he should be thereunto required.

"And whereas the said defendant afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money, before that time due and owing from the said defendant to the said plaintiffs, and then being in arrear and unpaid; and upon that account the said defendant was then and there found in arrear and indebted to the said plaintiffs in a large sum of money, to wit, in the further sum of two thousand and seven dollars and eighty-four cents, like money; and so being found in arrear and indebted to said plaintiffs, the said defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, undertook and promised to the said plaintiffs to pay them the said last mentioned sum of money when he should be thereunto afterwards required.

"Yet the said defendant not regarding his said several promises and undertakings so by him made in this behalf as aforesaid, but contriving and fraudulently intending, craftily and subtly to deceive and defraud the said plaintiffs in this respect, hath not yet paid the said several sums of money or any part thereof to the said plaintiffs, (although so to do the said defendant was requested by the said plaintiffs on the same day and year aforesaid, and often afterwards at the county aforesaid,) but he to do this hath hitherto refused and still refuses: wherefore the said plaintiffs say they are injured and have sustained damage to the value of five thousand dollars current money, and therefore they bring suit, &c.

"SWANN, *for the plaintiffs.*

"Pledges, &c.—JOHN DOE and RICHARD ROE."

A copy of which said declaration was made and sent with the writ to the marshal of the district aforesaid, thereon endorsed, "to be served on the defendant with the writ."

At which mentioned first Monday of December, in the year of our Lord one thousand eight hundred and twenty-nine, being the day of the return of the foregoing writ, come into the circuit court here, the said United States of America by their attorney aforesaid; and the marshal of the district aforesaid to whom the said foregoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit: "*cepi*, T. Ringgold, marshal;" and the said Thos. Fillebrown, jr., being called, appears in court here by Richard S. Cox and Walter Jones, esqrs., his attorneys; and thereupon, on motion of the said United States by their attorney aforesaid, it is ruled by the court here that the said Thomas Fillebrown, jr., give special bail in the plea aforesaid, or in default thereof be committed to the custody of the marshal of the district aforesaid; whereupon a certain Thomas Sewall

and Harvey Lindsley, present here in court in their own proper person, and (with the consent of the said United States by their attorney aforesaid,) undertake for the said Thomas Fillebrown, jr., that, in case the said United States shall recover judgment against the said Thomas Fillebrown, jr., in the plea aforesaid, or that the said Thomas Fillebrown, jr., shall be therein legally convict, that then the said Thomas Fillebrown, jr., shall pay the condemnation of the court thereupon, or render his body to the custody of the marshal of the district aforesaid in satisfaction thereof, or that they, the said Thomas Sewall and Harvey Lindsley, will do the same for him; and thereupon, on motion of the said United States by their attorney aforesaid, it is ruled by the court here that the said Thomas Fillebrown, jr., answer to the declaration aforesaid of the said United States in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; and the said Thomas Fillebrown, jr., by his attorneys aforesaid, defends the force and injury, when, and so forth, and prays leave of the court here to imparle until the first Monday of May next, and then to answer to the declaration aforesaid of the said United States in the plea aforesaid, and to him it is granted: the same day is given to the United States also.

At which said first Monday of May, in the year of our Lord one thousand eight hundred and thirty, to which said day the said Thomas Fillebrown, jr., had leave to imparle, and then to answer to the declaration aforesaid of the said United States in the plea aforesaid, came again into the circuit court here, as well the said United States by their attorney aforesaid, as the said Thomas Fillebrown, jr., by his attorneys aforesaid; and the said Thomas Fillebrown, jr., by his attorneys aforesaid, as before defends the force and injury, when, and so forth, and saith that he did not assume upon himself in manner and form as the said United States above against him have complained, and of this he puts himself upon the country, and the said United States in like manner, and so forth; therefore let a jury thereon appear before the court here immediately, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; whereupon for trying the issue aforesaid, it is ordered by the court here that twelve persons from the panel of petit jurors returned to the court here by the marshal of the district aforesaid, be drawn by ballot, according to the law in such case made and provided; and thereupon the twelve persons so drawn being called, came, who, being empanelled, and sworn to say the truth in the premises, upon their oath do say that the said Thomas Fillebrown, jr., did assume upon himself in manner and form as the said United States within against him have complained, and they assess the damages of the said United States, sustained by occasion of the non-performance of the promise and assumption aforesaid, to the sum of nineteen hundred and thirty-seven dollars and seventy cents, current money: whereupon the said United States by their attorney, pray judgment against the said Thomas Fillebrown, jr., of and upon the verdict aforesaid, by the jurors aforesaid, in form aforesaid given; and the said Thomas Fillebrown, jr., by his attorneys aforesaid, saith that the court here ought not to proceed to render judgment upon the said verdict, and prays that judgment against him,

of and upon the said verdict, by the jurors aforesaid, in form aforesaid given, may be set aside, and that the issue aforesaid may be tried anew by other jurors, to be afresh empannelled; and files in court here the following reasons, that is to say:

*Reasons for new trial.*

UNITED STATES  
*vs.*  
 THOMAS FILLEBROWN, jr. }

1. Because the verdict is against law.
2. Because it is contrary to the instruction of the court.
3. Because it is against evidence.
4. Because it is without evidence.
5. Because it is incongruous and inconsistent with itself.

JUNE 16, 1830.

R. S. COXE,  
*Attorney for defendant.*

Whereupon all and singular the premises being seen, and by the court here fully understood, and mature deliberation being thereupon had, for that it appears to the court here that the verdict aforesaid be set aside and held entirely as void, and of no force or effect, and that the issue aforesaid be tried anew by other jurors, to be afresh empannelled; therefore let a new jury thereon appear before the court here on the first Monday of December next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to said parties then and there, &c.

At which said first Monday of December, in the year of our Lord one thousand eight hundred and thirty, come again into the circuit court here, as well the said United States, by their attorney aforesaid, as the said Thomas Fillebrown, jr., by his attorneys aforesaid; and thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here, thereon, is continued until the first Monday of May next.

And now at this day, to wit: the said first Monday of May, in the year of our Lord one thousand eight hundred and thirty-one, come again into the circuit court here, as well the said United States by their attorney aforesaid, as the said Thomas Fillebrown, jr., by his attorneys aforesaid; and the said Thomas Fillebrown, jr., by his attorneys aforesaid, files in court here, the following deposition, to wit:

HUNTERDON COUNTY, }  
*State of New Jersey.* }

The deposition of Samuel L. Southard, in the county and State aforesaid, a witness, produced, sworn, and examined on the part of the plaintiff, in a certain cause depending in the circuit court of the District of Columbia, for the county of Washington, wherein Thomas Fillebrown, jr., is plaintiff, and Duff Green is defendant.

And also the deposition of the said Samuel L. Southard, a witness



produced, sworn, and examined on the part of the defendant, in a certain cause depending in the circuit court of the District of Columbia, for the county of Washington, wherein the United States is plaintiff, and the said Thomas Fillebrown, jr., is defendant.

That is to say: From the year 1825, to the month of March, 1829, this deponent was Secretary of the Navy, and one of the commissioners of the Navy Hospital Fund; the other commissioners were the Secretary of the Treasury and the Secretary of War. The situation of the fund at the commencement of the period mentioned, and during the whole period, will be found in the reports made to the President and to Congress, and in letters to the Committee of Ways and Means in the House of Representatives, and of Finance in the Senate, by said commissioners and Secretary of the Navy. It required constant and earnest attention. Previous to that time separate books and records of its administration and management had not been kept, and the commissioners thought it necessary to provide them, and to appoint a secretary to discharge the duties usually performed by the secretaries of other funds. Thomas Fillebrown, jr., the plaintiff in the above mentioned cause against Duff Green, and the defendant in the above mentioned cause by the United States against said Fillebrown, was appointed by the board secretary, for the discharge of said duties, and his salary fixed at the sum of two hundred and fifty dollars per annum.

This deponent was, by the direction of the board, and by the previous practice and usage, acting commissioner of the fund, and attended to all matters connected with it, but, in every case where any new arrangements were to be made, money to be expended on a new object, or principle to be settled, he consulted with, and had the approval and authority of the whole board, and all his acts were considered as authorized and sanctioned by it.

The appointment and salary of Mr. Fillebrown had the direct and express sanction of the board, and it was understood that he was to discharge his duties at such times and in such manner as not to interfere with his duties as clerk in the Navy Department.

He acted as secretary during the remainder of the period above mentioned after his appointment, which was in October or November, 1825, but the records of the fund do not show the whole amount of labor which he had to perform; his duties were often both laborious and troublesome.

Sometime after his appointment, when it was considered proper to keep separate records and files of whatever related to this fund, he was directed to procure the necessary books, and make the necessary examinations into the records and files of the navy office and Fourth Auditor's office, and to do whatever was required to place the papers belonging to the fund in a proper condition. This was properly the duty of the secretary of the fund, but it related to a time previous to his appointment, and for which he could receive no compensation by his salary. It was therefore thought proper to allow him salary for such period previous to his actual appointment, as would be proportioned to the amount of labor actually performed by him, and such allowance was made about the month of May, 1826, and had the

approbation of the board. Deponent believes it was one hundred and twenty-five dollars, half a year's salary, but deponent refers to the files of the fund for the written authority given to him to receive the money. This allowance was regarded in the light of payment for extra service, and was given in this form to show the character of the service rendered by him.

Subsequent to the appointment of Mr. Fillebrown, and the fixing of his duties and salary, the commissioners were enabled by appropriations, and by collecting the moneys belonging to the fund from various sources, to proceed in the purchase of sites for hospitals and an asylum, and commence the erection of the buildings, as they were directed to do by the act establishing navy hospitals, passed February 26th, 1811. The fund was placed in the hands of the Treasurer of the United States as their treasurer; and, in collecting and disbursing it, it was found indispensable to have an agent who should attend carefully to it, and be responsible to the board. This did not belong to the duties of the secretary, Mr. Fillebrown, but it was thought best to give the agency to him, on account of his acquaintance with every part of the interests connected with the fund, and his fitness for the discharge of the duty. He was appointed the agent, with the understanding that he should receive a suitable compensation for the services he should render in that capacity. Deponent arranged with Mr. Fillebrown the principles, manner and forms of collecting and disbursing the moneys, and he prepared the drafts, warrants and letters for the signature of deponent when necessary; and in many, perhaps in most cases, had the responsibility of attending the payment and transmission of the moneys, and deponent believes that he did, at all times, act uprightly, diligently and skilfully in every thing relating to the subject. In so doing, it was the understanding of the commissioners that he should receive compensation, in the mode, and according to the practice of the government in other and similar cases, but deponent does not distinctly recollect whether it was to be by a specific sum, or by a percentage on the money disbursed, but is under the impression that it was the latter, that being the usual mode in such cases.

Deponent is under the impression that he did, by the authority of the board, allow one or more of the accounts presented by Mr. Fillebrown, in conformity with the facts and principles above detailed; and that such approval and allowance will be found on file in the office of the secretary of the fund. Deponent very well recollects, that, about the first of March, 1829, Mr. Fillebrown called on him with his accounts, desiring their adjustment and allowance; deponent was then very sick and not able to examine them, or consult the other commissioners; he, therefore, dictated to an amanuensis, a letter to Mr. Fillebrown, expressing his views and opinions respecting his claims, which letter is *probably* dated March 2d, 1829, and now on file among the papers of the fund; deponent then believed, and still believes, that Mr. Fillebrown was entitled to a just compensation for the performance of the duties before mentioned.

Deponent further states that he is acquainted with some of the facts connected with the payment of the sum of nine thousand dollars to



the Hon. Thomas Newton, on the 3d March, 1829, and which deponent has been informed was charged against the said Fillebrown. This sum was the price agreed by the commissioners of the navy hospital fund to be paid to Mr. Newton for land purchased of him near Norfolk, and on which the navy hospital has been erected. Great care had been taken to make the necessary examinations and select the best site for this hospital, and this land was believed to furnish the best that could be procured. An agreement was then made with Mr. Newton to give him a certain sum for a specified number of acres; according to deponent's recollection it was six thousand dollars for about fifteen or twenty acres. After this agreement, deponent and the Hon. James Barbour, one of the commissioners, went to Norfolk to fix on the location of the building and make the necessary arrangements with the architect and others for its erection. While there we became satisfied that the convenience, economy, and usefulness of the establishment would be promoted by purchasing the whole of the land owned by Mr. Newton at that point; we did so, and agreed to give him \$9,000 for the whole. The purchase was on the ground, in the presence of, and after consulting the architect and several other respectable and intelligent gentlemen who were present. Deponent believes that the first agreement was made with Mr. Newton in 1826, and the last early in the year 1827. The commissioners took possession of the land and proceeded in the erection of the building. The making of the deeds and the payment of the money were the subjects of several conversations between Mr. Newton and this deponent, and deponent preferred that Mr. Newton should wait for the payment until it could be made without inconvenience; and it was so agreed. At the commencement of the session, in December, 1828, Mr. Newton informed deponent that he had brought the deed for the land, and desired that the money should be paid before the end of the session, which was agreed to by deponent, as he expected an appropriation for the benefit of the fund. The appropriation was made of \$125,000 on the 2d March, 1829, and on the next day Mr. Newton called with his deed for the purpose of receiving the money; deponent was sick in bed, and desired Mr. Newton to take the deed to the office, have it examined, and the payment prepared there.

With the foregoing facts the first clerk in the department and Mr. Fillebrown, the secretary of the fund, were acquainted, and knew that the purchase had been made, and that the money was intended to be paid out of the before-mentioned appropriation. A short time after Mr. Newton went to the office, deponent received a note in pencil from the first clerk, stating, in substance, that the certified copy of the law had not been procured, and therefore that the money could not be drawn under it on that day, but that he could pay the money to Mr. Newton, and that a requisition could be subsequently signed. The note did not, as deponent recollects, state how the money was to be paid. As Mr. Newton was prepared to leave Washington, and deponent desired that he should be paid before deponent left the office, he returned for answer that the money should be paid; and in the name of Mr. Fillebrown, secretary of the fund, it was so done, and taken, as deponent was subsequently informed, from the pay of the

navy, to be replaced immediately by a requisition on the appropriation for the navy hospital fund. This requisition deponent would have signed if it had been presented to him before he resigned the office of Secretary of the Navy, and did not doubt that it would be signed by his successor in office, that being all that was necessary to place the matter in the situation required by law and the obligations which vested in the commissioners to complete their contract with Mr. Newton. In paying the money Mr. Fillebrown acted as agent of the commissioners, in completing the contract which they had made, and by which they had procured the land on which they were erecting a very large and costly building.

Deponent is not aware of any other facts necessary for him to state, and important to either of the parties in the above-mentioned causes; and in making the foregoing statements deponent has not been able to examine the papers and documents mentioned, to refresh his memory of dates and sums, but refers to them as the means of correcting his errors, if he have committed any. And further saith not.

SAM. L. SOUTHARD.

Examined, sworn, and subscribed, May 21, 1831, before  
CHARLES EWING,  
*Chief Justice of the Supreme Court of New Jersey.*

THOMAS FILLEBROWN, junior, }  
vs. } *In case.*  
DUFF GREEN.

THE UNITED STATES }  
vs. } *In case.*  
THOMAS FILLEBROWN, junior.

I, Charles Ewing, Chief Justice of the Supreme Court of the State of New Jersey, not being of counsel or attorney for either of the said parties, nor in any manner interested in the event of the said causes, or either of them, do hereby certify that the foregoing deposition of Samuel L. Southard, esq., was taken before me, at my house, in the city of Trenton, county of Hunterdon, and State of New Jersey, on the twenty-first day of May, in the year of our Lord one thousand eight hundred and thirty-one; that the said deposition was reduced to writing by the said deponent in my presence, at the said time and place, and so also subscribed by him, the said deponent being first by me carefully examined and cautioned, and sworn to testify the whole truth relative to the before mentioned causes, or matters in controversy. The said deposition was taken at the instance of the said Thomas Fillebrown, jr., the plaintiff in the one, and the defendant in the other of the said causes named in the caption or introduction hereof; and the reason for taking the same was that the residence of the said deponent, Samuel L. Southard, at Trenton aforesaid, is at a greater distance from Washington county, in the District of Columbia, the place of trial, than one hundred miles. Neither the adverse party nor his attorney, so far as I know, and as I verily believe, are within one hundred miles of this

place, and therefore they were not notified by me of the taking of this deposition, nor present at the taking thereof. And I further certify that the said deposition is by me sealed up, and directed to the said circuit court of the District of Columbia for the county of Washington. In testimony whereof I have hereunto set my hand and seal, the day and year in this behalf above written.

CHARLES EWING. [L. S.]

Whereupon, for trying anew the issue aforesaid, it is ordered by the court here that twenty persons, from the panel of petit jurors returned to the court here by the marshal of the District aforesaid, be drawn by ballot, according to the law in such case made and provided; and thereupon, the twenty persons being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called, came, to wit: Greenbury Gaither, Clement McWilliams, Thomas Marshall, Singleton Townshend, Jacob Janney, Henry McPherson, Thomas Fenwick, Henry G. Wilson, Edward N. Roach, Matthew Mitchell, Jesse Lipscomb, and William McCauley, who being empannelled, and sworn to say the truth in the premises, upon their oath do say that the said Thomas Fillebrown, jr. did not assume upon himself in manner and form as the said United States within against him have complained; therefore, it is considered by the court here that the said United States take nothing by their writ and declaration aforesaid, and that the said Thomas Fillebrown, jr. go thereof without day, &c.

And the jurors aforesaid, at the time of bringing in their verdict aforesaid, filed in court here the following certificate, to wit: "The jurors empannelled in the case of the United States *vs.* Thomas Fillebrown, jr. find, upon examining the accounts filed, that the United States are indebted to the said Fillebrown in the sum of four hundred and thirty dollars."

Witness our hands, this 26th day of May, 1831.

Greenbury Gaither,  
Clement McWilliams,  
Wm. M. McCauley,  
Jacob Janney,  
Thos. Fenwick,  
Jesse Lipscomb,

Singleton Townshend,  
Matthew Mitchell,  
Ed. N. Roach,  
Thos. Marshall,  
H. G. Wilson,  
Henry McPherson.

*Memorandum.*—Before the jurors aforesaid withdrew from the bar of the court here, the said United States, by their attorney aforesaid, filed in court here the following bills of exceptions, to wit:

THE UNITED STATES,        )  
                                  *vs.*        )  
THOMAS FILLEBROWN, junior. }

Upon the trial of this cause, the plaintiffs gave in evidence to the jury the account hereunto annexed, &c., in these words and figures, to wit: (copied at page 28, &c.,) and read to the jury the certificate of

the officers of the government annexed to the said account. The plaintiffs then read in evidence to the jury the different warrants mentioned in the said account, with the receipts of the defendant upon the said warrants for the moneys therein mentioned; which said warrants, it is admitted, correspond with those charged in the said account.

The plaintiffs then read to the jury the following copies of entries from the books kept by the Board of Navy Hospital Commissioners, in these words, to wit: (copied at page 41, &c.)

The plaintiffs then gave evidence to the jury to prove that the defendant entered upon the performance of the duties mentioned in his said letter of appointment, and was the only person appointed by the said Navy Hospital Board to perform any of the duties of the said board, except as appears by the documentary evidence in this cause.

The plaintiffs gave evidence to prove that the defendant, at the time he was so appointed by the said Navy Hospital Commissioners, was a clerk in the Navy Department of the United States, upon a salary of \$1,000 per year, and continued to be a clerk in the said Navy Department for the whole time he performed the duties required of him by the said Board of Navy Hospital Commissioners.

The plaintiffs produced a book containing a record of the correspondence, &c., of the said Board of Commissioners the entries were in, from page 34 to page 131, inclusive, are admitted to be in the handwriting of defendant. (Which book is to be considered as annexed, and used in the appellate court, either the original or copy.) It is admitted, that besides the said book there are three others belonging to the office of said commissioners, which were also kept by the defendant during the time he acted as secretary to the board, to wit: a warrant book, journal, and ledger; all of which are to be considered in like manner annexed, &c., &c.

The plaintiffs further produced in evidence, two books from the office of the Treasurer of the United States, containing the account of the Treasurer with the Commissioners of the Navy Hospital Fund, to be in like manner considered as annexed, &c., &c.

The plaintiffs vested their case upon this evidence.

The defendant on his part produced evidence to prove that it was the general usage of the several departments of the government to allow to officers of the government, both civil and military, commissions upon pecuniary transactions, not within the sphere of their regular official duties, which commissions were allowed over and above the stated salary or other compensation to which such officers were entitled *ex officio*, and to support such usage, proved that the Navy Department had been for a long course of years in the habit of allowing the officers of the navy commanding squadrons or ships, a commission of two and a half per cent. for bills drawn by such officers on the Navy Department, in order to obtain supplies abroad for the use of such squadrons or ships; and also to allow such officers, when, from any emergency, acting as pursers, a like commission on their disbursements of public money, over and above their regular pay and emoluments *ex officio*, and the profits arising from the purser's business, so transacted by them; and also to allow such officers other extra compensation, in the form of a per diem allowance, when engaged in



extra service, as on surveys, courts martial, &c.; that it had also, for a long course of years been the habit and custom of the War Department to allow such commissions and other extra compensation for like services to the officers of the army, and of the topographical engineers; and the defendant further produced, and read in evidence the report of the Third Auditor, accompanying the letter of the Secretary of War, (January 2, 1827,) to the Speaker of the House of Representatives, printed among the documents of that House, of the 19th Congress, and 2d session, Doc. No. 41, which was admitted in evidence, and to be referred to, (extracts copied, beginning at page —;) and defendant, also, produced, and read in evidence the report of the Secretary of the Treasury to the House of Representatives, printed among the documents of that House of the 21st Congress, 1st session, Doc. No. 57, in like manner admitted, and to be referred to, (copied, beginning at page —;) and further proved that the Navy Department had, for thirty or forty years past, been in the habit of allowing one of the clerks of that department a commission of one per cent. over and above his regular salary as clerk, for the disbursement of the contingent fund of the department, and occasional disbursements of the fund appropriated for the pay of the navy; and that the accounting officers of the treasury, attached to the War and Navy Departments, were in the habit of passing and allowing such commissions and other extra compensation in the settlements of the accounts of the persons claiming the same, upon such allowance being signified on the account, by the head of the department putting the initials of his name to such allowance; and the defendant produced, and read in evidence to the jury, the following accounts, &c., from among the public documents of admitted accounts of disbursements of the said navy hospital fund, to wit: Account of George Harrison, navy agent, with the said commissioners, June 26, 1826; a receipt from the same, dated July, 14, 1826; account of W. S. Rodgers, purser in the navy, September 24, 1823, with a receipt dated August 16, 1826; approval of George Harrison's account by the commissioners, per letter, July 12, 1826; account of Silas Butler, purser of the navy, dated May 15, 1824; also, the two reconciling statements furnished by the Fourth Auditor to defendant, dated November 5, 1829, and November 24, 1829; and defendant's letter to said Fourth Auditor, dated November 5, 1829; all of which are admitted; (copied at page — to page —;) and the said defendant further proved, that in the first account rendered by him to the said commissioners, after his said appointment as secretary, he charged a commission of one per cent. on his disbursements of the navy hospital fund, of which the allowance is signified by the initials of S. L. Southard, then Secretary of the Navy, signed by himself; and his several accounts, as rendered to the said commissioners, are produced from the Treasury Department, and hereto annexed, (copied at page —;) also a letter from the said S. L. Southard, written on the 2d March, 1829, while he was such Secretary as aforesaid, (being the same letter recorded in said book, produced by plaintiffs as aforesaid, at page 130,) to the admission of which letter the plaintiffs object, any further than as the testimony of Mr. Southard to the matters

therein stated ; also the deposition of J. H. Eaton, present Secretary of War, which is admitted and hereto annexed. (Copied at page —.)

*Memorandum.*—The said book containing the record of Mr. Southard's said letter of the 2d March, 1829, was produced by plaintiffs after that letter had been given in evidence by defendant, as aforesaid.

And it was further proved that no account was opened at the treasury with the defendant on account of the receipts and disbursements of the said navy hospital fund, till the account was transmitted to be settled preparatory to this suit, and when the above account first produced by plaintiffs was stated in the form aforesaid ; and that defendant during all the time he acted as Secretary, as aforesaid, rendered his accounts to the said commissioners, in the form above given in evidence, and not to the Treasury Department.

The plaintiffs then gave to the jury this further evidence, viz : the evidence of George W. Dashiell, copied at page —.

And the defendant gave to the jury this further evidence, viz : the evidence of George Macdaniel, copied at page —.

Whereupon the plaintiffs prayed the opinion and instruction of the court to the jury as follows :

Upon the evidence so given the counsel for the United States prayed the court to instruct the jury—

That if, from the evidence aforesaid, it should appear to them that the defendant had accepted the appointment of secretary of the Board of Navy Hospital Commissioners upon the terms mentioned in the said appointment, and in the said letter of S. L. Southard to him of the 7th of November, 1825, as herein before stated, that in that case he was not entitled to any extra compensation for the disbursement of the moneys belonging to the said navy hospital fund, and that he was only entitled to \$250 a year for the whole of the services performed by him for the said board.

And the said plaintiffs prayed the court further to instruct the jury—

That if they should be satisfied, by the evidence aforesaid, that the said Board of Navy Commissioners had never passed any order or resolution for the payment of any commission upon the moneys disbursed by the defendant for the said board, and that the claim for commissions which he now makes had never been sanctioned or settled by the said board, that it is not competent for him now to set up the said claim for commissions against the claim of the United States, for which this suit is brought.

Which instructions the court refused ; and thereupon, at the instance of the defendant, instructed the jury as follows :

If the jury believe, from the evidence, that the regular duties to be performed by the defendant as secretary to the Commissioners of the Navy Hospital Fund, at the stated salary of \$250 per annum, did not extend to the receipt and disbursement of the fund ; that the duty of receiving and disbursing the fund was required of and performed by him as an extra service, over and above the regular duties of his said appointment ; that it has been for many years the general practice of the government and its several departments to allow to persons, though holding offices or clerkships for the proper duties of which they re-



ceived stated salaries or other fixed compensation, commissions over and above such salaries or other compensation, upon the receipts and disbursements of public moneys appropriated by law for particular services, when such receipts and disbursements were not among the ordinary and regular duties appertaining to such offices or clerkships, but superadded labor and responsibility apart from such ordinary and regular duties; and that defendant took upon himself the labor and responsibility of such receipts and expenditures of the navy hospital fund at the request of said commissioners, either under an agreement or with an understanding on both sides that he should be compensated for the same, as extra service, by the allowance of a commission on the amount of such receipts and disbursements; then it is competent for the jury in this case to allow such commissions to the defendant, on the said receipts and disbursements, as the jury may find to have been agreed upon between the said commissioners and defendant; or, in the absence of any specific agreement fixing the rate of such commissions, such rate as the jury shall find to be reasonable and conformable to the general usage of the government and its departments in the like cases.

To which refusal of the court to give the instructions moved by the plaintiffs, and to the said instructions given at the instance of the defendant, plaintiffs except, &c., and this their bill of exception is sealed, &c., this 26th of May, 1831.

W. CRANCH.

JAMES S. MORSELL.

[SEAL.]  
[SEAL.]

Date.	No. of warrant.	Amount.	Date.	To whom paid.	Amount.
1826.			1826.		
February 6	Warrant No. 1.....	\$77 50	February....	J. & J. Williams.....No. 1..	\$15 00
May 1	do.....2.....	62 50	May 6	My services as secretary for the year ending this day.....	250 00
May 24	do.....3.....	125 00	July 14	George Harrison.....No. 2..	161 91
July 12	do.....4.....	161 91	August 24	Davis & Force.....3.....	18 50
August 10	do.....5.....	198 50	Sept. 24	William S. Rogers.....4.....	180 00
October 24	do.....6.....	1,000 00	October 31	Pratt & Bricknell.....5.....	1,000 00
November 13	do.....7.....	100 00	Nov. 15	George Harrison.....6.....	100 00
November 30	do.....8.....	3,300 00	December 14	Thomas Harris.....7.....	82 20
December 5	do.....9.....	200 00	1827.		
December 29	do.....10.....	130 00	January 6	Pratt & Bricknell.....8.....	3,000 00
1827.			January 19	George Harrison.....9.....	10,793 94
January 16	do.....11.....	10,793 94	January 29	John Haviland.....10.....	300 00
January 29	do.....12.....	1,450 00	March 2	John Haviland.....11.....	10,000 00
January 30	do.....13.....	300 00	March 14	William Strickland.....12.....	6,000 00
February 28	do.....14.....	10,000 00	March 15	Tho. Harris.....13.....	101 34
March 6	do.....15.....	4,500 00	March 24	George Strickland.....14.....	75 00
March 13	do.....16.....	101 34	March 31	George Harrison.....15.....	2,200 00
March 21	do.....17.....	75 00	May 4	John Haviland.....16.....	10,000 00
March 29	do.....18.....	1,200 00	May 6	My salary for year.....	250 00
April 30	do.....19.....	10,000 00	May 9	William Strickland.....17.....	10,000 00
May 1	do.....20.....	62 50	May 25	George Harrison.....18.....	1,113 63
May 7	do.....21.....	10,000 00	June 14	William Strickland.....19.....	10,000 00
May 22	do.....22.....	1,113 63	June 28	John Haviland.....20.....	10,000 00
June 11	do.....23.....	10,024 87	July 7	William Strickland.....21.....	10,000 00
June 21	do.....24.....	10,000 00	August 22	John Haviland.....22.....	15,000 00
July 5	do.....25.....	10,000 00	August 22	William Strickland.....23.....	10,000 00
August 6	do.....26.....	62 50	Sept. 20	William Strickland.....24.....	10,000 00
August 15	do.....27.....	15,000 00	October 6	John Haviland.....25.....	10,000 00
August 20	do.....28.....	10,000 00	Nov. 2	Tho. Harris.....26.....	500 00
September 17	do.....29.....	10,000 00	Nov. 17	Tho. Harris.....27.....	100 00
September 26	do.....30.....	10,000 00			

October 31	-----do-----31-----	562 50	1828.			
November 15	-----do-----32-----	300 00	February 29	John Haviland -----	28--	1,200 00
1828.			March 20	William Strickland -----	29--	5,000 00
January 3	-----do-----33-----	200 00	April 15	William Strickland -----	30--	4,405 94
January 30	-----do-----34-----	1,450 00	May 6	My salary for the year -----		250 00
February 29	-----do-----35-----	1,200 00	May 15	William Strickland -----	31--	5,000 00
March 18	-----do-----36-----	3,550 00	June 12	William Strickland -----	32--	10,000 00
April 11	-----do-----37-----	4,405 94	June 18	John Haviland -----	33--	15,000 00
May 13	-----do-----38-----	5,000 00	July 17	William Strickland -----	34--	10,000 00
June 9	-----do-----39-----	10,000 00	October 6	William Strickland -----	35--	10,000 00
June 17	-----do-----40-----	25,000 00	October 7	John Haviland -----	36--	10,000 00
October 3	-----do-----41-----	20,175 00	Nov. 17	John Haviland -----	37--	5,000 00
November 13	-----do-----42-----	5,000 00	December 4	J. Avnett -----	38--	63 52
November 24	-----do-----43-----	200 00	December 16	T. Harris -----	39--	500 00
December 4	-----do-----44-----		1829.			
December 11	-----do-----45-----	63 52	February 10	T. Harris -----	40--	1,000 00
		500 00	February 6	My salary for 3 quarters -----		187 50
1829.						207,848 48
February 10	-----do-----46-----			Commission of 1 per cent. on amount dis-		
March 2	-----do-----47-----	1,100 00		bursed -----		2,007 84
		910 17				209,856 32
		209,856 32	April 4	John Haviland -----	No. 41--	10,000 00
March 31	-----do-----48-----	20,000 00	April 14	William Strickland -----	42--	10,000 00
		229,856 32				229,856 32

Mr. Fillebrown, it appears, was appointed secretary on November 7, 1825. He can be entitled to pay as such only from the date of his appointment. The allowance of 1 per cent. on the moneys disbursed cannot be allowed unless authorized by some existing law. None such is known to the commissioners; of course they cannot have authority to admit it.

SEPTEMBER 7, 1829.

J. H. EATON.  
J. BRANCH.

Dr. *Thomas Fillebrown, jr., Secretary of the Commissioners of Navy Hospital Fund, in account with United States.* Cr.

NAVY HOSPITALS.		NAVY HOSPITALS.	
To this sum received from said commissioners between the 6th day of February, 1826, and the 31st March, 1829, per warrants from 1 to 48, inclusive, as credited in said Fillebrown's account, transmitted to this office by the Second Comptroller of the Treasury herewith-----	\$229,856 32	By expenditures, per abstract-----	\$226,910 98
	229,856 32	Salary as secretary to the commissioners, from November 7, 1825, to May 16, 1829, inclusive, is 3 years, 6 months, and 10 days, at \$250-----	881 96
		Balance due the United States-----	2,063 38
To balance due the United States-----	2,063 38		229,856 32
<i>Reconciling statement of the account of Thomas Fillebrown, jr., Secretary of the Commissioners of the Navy Hospital Fund, reported September 10, 1829.—No. 226.</i>			
To overcharge of salary from May 6 to November 7, 1825, 6 months, 1 day, at \$250-----	\$125 63		
Commission of 1 per cent. disallowed-----	2,007 84		
	2,133 52		
Deduct pay from February 6, 1829, (time charged in his account,) to May 16, 1829, not charged, 3 months, 11 days-----	70 14		
Balance due the United States per official statements-----	2,063 38		

TREASURY DEPARTMENT, *Fourth Auditor's Office.*

SECOND COMPTROLLER'S OFFICE, *September 11, 1829.*

Stated by ROBERT GETTY.

Examined: E. REYNOLDS.

No. 226.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, September 10, 1829.*

I certify that I have examined and adjusted the account of Thomas Fillebrown, jr., secretary of the navy hospital fund, and find that he is indebted to the United States in the sum of two thousand and sixty-three dollars and thirty-eight cents.

*Navy Hospitals, \$2,063 38.*

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

T. H. GILLISS,  
*Acting Fourth Auditor.*

ISAAC HILL, Esq.,  
*Second Comptroller of the Treasury.*

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 11th day of September, 1829.

ISAAC HILL,  
*Second Comptroller.*

*The Commissioners of Navy and Hospitals to Thomas Fillebrown, jr.,  
 their secretary, Dr.*

For my salary as secretary, from 7th February to 16th May, 1829, three months, ten days, at \$250 per annum	\$69 36
For my commissions as disbursing officer on the following payments:	

1829. March 3, To T. Newton, for land...	\$9,000 00
April 4, To J. Haviland, (advance)	10,000 00
April 14, To W. Strickland, (advance)	10,000 00

\$29,000, 1 pr. ct. 290 00

For short charge of commissions in account rendered 2d

March, 1829, viz:

On \$207,848 48, 1 per cent .....	2,078 48
Deduct amount charged and received.....	2,007 84

70 64

430 00

E. E.

THOMAS FILLEBROWN, JR.

*Thomas Fillebrown, jr., secretary of the Commissioners of the Navy Hospital Fund, to the United States, Dr.*

Navy Hospitals:

For balance due per report No. 226, dated 10th September, 1829 .....	\$2,063 38
--	------------



Pay afloat:	
For requisition No. 2,388, issued in his favor March 3, 1829 .....	\$9,000 00
	<hr/>
	11,063 38
	<hr/>
Navy hospitals.....	2,063 38
Pay afloat.....	9,000 00
	<hr/>
	11,063 38
	<hr/>

TREASURY DEPARTMENT,  
Fourth Auditor's Office.

Stated by B. BUCKNER, Clerk.

*Reconciling statement of the account of Thomas Fillebrown, jr., secretary to the commissioners of the navy hospital fund.*

For this sum overcharged for salary per report No. 226,	\$125 68
1 per cent. commission disallowed per report No. 226.....	2,007 84
requisition No. 2,388, issued in his favor March 3, 1829 .....	9,000 00
1 per cent. commission disallowed on \$29,000 in his last account.....	290 00
1 per cent. commission disallowed for short commission in his last account.....	70 64
	<hr/>
	11,494 16
Deduct this sum due him per his last account herewith.....	\$430 00
Deduct short calculation in salary.....	78
	<hr/>
	430 78
	<hr/>
Balance due the United States per official statement.....	11,063 38
	<hr/>

TREASURY DEPARTMENT,  
Fourth Auditor's Office.

Stated by B. BUCKNER, Clerk.

No. 353.

TREASURY DEPARTMENT,  
Fourth Auditor's Office, October 31, 1829.

I certify that I have examined and adjusted the accounts of Thomas Fillebrown, jr., secretary to the commissioners of the navy hospital

fund, and find that there is due from him to the United States the sum of eleven thousand and sixty-three dollars and thirty-eight cents.

Due the United States under navy hospitals.....	\$2,063 38
Pay afloat.....	9,000 00

---

11,063 38

As appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the Treasury thereon.

AMOS KENDALL, *Auditor.*

ISAAC HILL, Esq.,  
*Second Comptroller of the Treasury.*

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 31st day of October, 1829.

ISAAC HILL,  
*Second Comptroller.*

*Thomas Fillebrown, jr., late Secretary to the Commissioners of the Navy Hospital Fund, in account with the United States.*

DR.

CR.

NAVY HOSPITALS.		NAVY HOSPITALS.	
To balance due, per report No. 353, dated October 31, 1859--	\$2,063 38	By balance due United States under this head -----	\$2,063 38
To balance due United States under this head-----	2,063 38		
PAY AFLOAT.		PAY AFLOAT.	
To balance, per report No. 353, dated October 31, 1829---	9,000 00	By Thomas Newton, Norfolk, Va., for this sum paid him per his receipt filed herewith -----	9,000 00

TREASURY DEPARTMENT, *Fourth Auditor's Office*

H. C. WILLIAMS, *Clerk.*

THOMAS FILLEBROWN.

No. 399.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, November 16, 1829.*

I certify that I have examined and adjusted the account of Thomas Fillebrown, jr., late secretary of the commissioners of the navy hospital fund, and find that there is due from him to the United States the sum of two thousand and sixty-three dollars and thirty-eight cents, under navy hospitals, as appears from the statement and vouchers herewith transmitted for the decision of the Second Comptroller of the treasury thereon.

AMOS KENDALL, *Auditor.*

ISAAC HILL, Esq.,  
*Second Comptroller of the Treasury.*

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance, this 16th day of November, 1829.

ISAAC HILL,  
*Second Comptroller.*

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, November 17, 1829.*

Pursuant to "An act to provide for the prompt settlement of public accounts," approved March 3, 1817, I, Amos Kendall, Fourth Auditor of the Treasury of the United States, do hereby certify that the foregoing are true transcripts from the original report on file in this office.

AMOS KENDALL.

Be it remembered that Amos Kendall, esq., who certified the foregoing transcript, is now, and was at the time of doing so, Fourth Auditor of the Treasury of the United States, and that faith and credit are due to his official attestations.

In testimony whereof I, Samuel D. Ingham, Secretary of the Treasury of the United States, have hereunto subscribed my name, [L. S.] and caused to be affixed the seal of this department, at the city of Washington, this seventeenth day of November, in the year of our Lord one thousand eight hundred and twenty-nine.

S. D. INGHAM,  
*Secretary of the Treasury.*

At a meeting of the commissioners of naval hospitals, in the city of Washington, on the 7th day of November, 1825:

Present, Hon. Samuel L. Southard, Secretary of the Navy; Hon. Richard Rush, Secretary of the Treasury; Hon. James Barbour, Secretary of War.

It was *Resolved*, That a secretary be appointed to this board to take charge of the books, papers, &c., belonging to the hospital fund, and

to execute such duties relative thereto as may be required of him by the board, for which services he shall be allowed the sum of two hundred and fifty dollars per annum.

*Resolved*, That Mr. Thomas Fillebrown, jr., be appointed secretary. And then the board adjourned.

NAVY DEPARTMENT, *November 7, 1825.*

SIR: You are hereby appointed secretary to the Board of Commissioners of the Naval Hospital Fund. The duties appertaining to this appointment you will commence forthwith. Your compensation will be two hundred and fifty dollars per annum.

I am, respectfully, &c.,

SAM'L L. SOUTHARD.

Mr. THOMAS FILLEBROWN, jr., *Present.*

NAVY DEPARTMENT, *May 22, 1826.*

SIR: In consideration of the duties performed by you since your appointment as secretary to the Commissioners of Navy Hospitals, you may consider your appointment as ante-dated six months, and draw a warrant for your salary for that period.

I am, respectfully, &c.,

S. L. S.

Mr. THOMAS FILLEBROWN, jr., *Present.*

*The Commissioners of Naval Hospitals to George Harrison, Navy Agent, Dr.*

For the purchase money and expense of survey, &c., of a lot of ground bought of Mr. Timothy Abbott, by order of the Hon. Sam'l L. Southard, Secretary of the Navy, in letter dated 1st May, 1826, situate on the river Schuylkill, north of, and near to, the United States arsenal, as a site for a naval hospital, containing twenty-five acres two roods and twenty-three perches .....

\$16,000 00

The services of T. Mitchell, land broker, surveyings and writings, &c.....

191 00

---

16,191 00

My commission on the above, at one per cent.....

161 91

---

16,352 91

---

Errors excepted. Philadelphia, June 26, 1826.

WILLIAM REED,  
*For George Harrison.*

Approved: S. L. S.

Philadelphia, July 14, 1826. Received from Thomas Fillebrown, jr., esq., secretary of the Commissioners of Naval Hospitals, one hun-



dred and sixty-one dollars and ninety-one cents, in full for balance due as per account stated, (\$161 91.) GEO. HARRISON.

The deeds shall be forwarded as soon as recorded, with the district attorney's certificate as to said title.

*Commissioners of Navy Hospitals to Wm. S. Rodgers, Dr.*

For brokerage on the purchase of real estate in Chelsea,  
intended as a site for a naval hospital, one per cent. on  
\$18,000..... \$180 00  
BOSTON, *September 24, 1823.*

Boston, August 16, 1826. Received payment for the above of Thos. Fillebrown, jr. WM. S. RODGERS.

Allowed: S. L. S.

NAVY DEPARTMENT, *July 12, 1826.*

SIR: Your letter of the 26th ultimo, with your account, &c., for purchase for the Commissioners of Navy Hospitals, has been received. The account is approved by the commissioners, and I now remit you my check for the sum of one hundred and sixty-one dollars and ninety-one cents, (\$161 91,) being the amount charged for commission. Be pleased to send me your receipt for this amount when realized, under cover to the honorable Secretary of the Navy.

When the deed shall be recorded, I will thank you to transmit the same to the commissioners.

I am, very respectfully, &c. T. F., JR., *Secretary, &c.*  
GEORGE HARRISON, Esq.,  
*Navy Agent, Philadelphia.*

OFFICE OF DISCOUNT AND DEPOSIT,  
*Washington, D. C., July 12, 1826.*

Pay to George Harrison, esq., or order, the sum of one hundred and sixty-one dollars and ninety-one cents, (\$161 91.)

T. F., JR.

NAVY DEPARTMENT, *November 25, 1829.*

I, John Boyle, do hereby certify that the preceding copy of a letter is correctly transcribed from a record book now kept in this department.

JOHN BOYLE.

Be it remembered, that John Boyle, who certified the preceding, is now, and he was at the time of doing so, a clerk of this department; and that faith and credit are due to his official attestations.

In testimony of which I, John Branch, Secretary of the Navy of the United States, have hereunto subscribed my name, and caused to be affixed the seal of the Navy Department, at the city of Washington, this 25th day of November, in the year of our Lord 1829, and of the independence of the United States the fifty-fourth.

JNO. BRANCH.

[L. s.]

*The United States Navy Department in account with Silas Butler, agent for the purchase of the homestead farm belonging to the estate of the late Martin Schenk.*

DR.

CR.

1824.				1823.			
March	1	To amount paid this day, being 10 per cent on whole am't of purchase for homestead farm belonging to the estate of the late Martin Schenk.	\$765 00	May	3	By amount of draft received this day from the Treasurer of the United States-----	\$6,885 00
May	1	To ditto, balance of purchase money due on ditto.	6,885 00			By balance due S. Butler, carried to his general account current with United States Navy Department-----	1,026 75
		To commissions for the purchase of the farm above named, deeds and maps of which have been forwarded to the Hon. the Secretary of the Navy, on \$7,650, at 2½ per cent.-----	191 25				
		To amount paid Abm. Vandervier, for examining the records of King's county, as per bill herewith-----	10 00				
		To ditto, for recording deeds, &c., as per bill herewith-----	2 00				
		To amount paid Jeremiah Sott, for surveying and furnishing map of the above described property, as per bill herewith-----	8 50				
		To amount paid Robert Tillotson, esq., district attorney, as per bill.-----	50 00				
			<hr/> 7,911 75				<hr/> 7,911 75
		To balance due, carried to S. B.'s general acc't..	<hr/> 1,036 75				

E. E.

SILAS BUTLER.

MAY 15, 1824.

Approved, except as to the commissions, which are suspended for future consideration, May 11, 1825.  
 Allowed.

S. L. S.  
 S. L. S.

NAVY DEPARTMENT, *November 25, 1829.*

I, John Boyle, do hereby certify that the within transcript is a true copy of an original account, on file in this department.

JOHN BOYLE.

Be it remembered, that John Boyle, who certified the preceding transcript, is now, and he was at the time of doing so, a clerk of this department, and that faith and credit are due to his official attestations.

In testimony of which I, John Branch, Secretary of the Navy of the United States, have hereunto subscribed my name, and caused to be affixed the seal of this department, at the city of Washington, this 25th day of November, in the year of our Lord 1829, and of the Independence of the United States the fifty-fourth.

JNO. BRANCH.

*Reconciling statement of the account of Thomas Fillebrown, jr., Secretary of the Commissioners of the Navy Hospital Fund, reported September 10, 1829.*

To overcharge of salary, from May 6 to November 7, 1825, 6 months 1 day, at \$250 per annum.....	\$125 68
To commission of 1 per cent. disallowed....	2,007 84
	<hr/>
	2,133 52
Deduct pay from February 6, 1829, (time charged to in his account,) to the 16th May, 1829, not charged, 3 months 11 days .....	70 14
	<hr/>
Balance due the United States per official statement.....	2,063 38
	<hr/> <hr/>

TREASURY DEPARTMENT,

*Fourth Auditor's Office, November 5, 1829.*

AMOS KENDALL.

*Reconciling statement of the account of Thomas Fillebrown, jr., Secretary to the Commissioners of the Navy Hospital Fund, reported October 31, 1829.*

For this sum overcharged for salary, per report No. 226	\$125 68
For 1 per cent. commission disallowed, per report No. 226	2,007 84
For requisition No. 2,388, issued in his favor, March 3, 1829.....	9,000 00
For 1 per cent. commission disallowed on \$29,000, in his last account.....	290 00
For 1 per cent. commission disallowed, for short com- mission on ditto.....	70 64
	<hr/>
	11,494 16

Deduct this sum, due him per his last account, herewith.....	\$430 00	
Deduct short calculation in salary.....	78	
		<u>430 78</u>
Balance due the United States per office statement.....	\$11,063 38	

TREASURY DEPARTMENT,

*Fourth Auditor's Office, November 5, 1829.*

AMOS KENDALL.

WASHINGTON, D. C., November 5, 1829.

SIR : I have received your letter of this date, enclosing a reconciling statement of my accounts, as settled in your office. By this document, I find that the item of \$9,000 is exhibited as a charge against me, notwithstanding the receipt for that sum is on the margin of the deed of the land for which the money was paid. These, together with the order on which I made the payment, were left by me in the Navy Department.

It is but just that I should be credited with the payment made to Mr. Newton, or have the valuable property in my own right, I cannot suppose that the Secretary of the Navy, in his wisdom, anticipates this alternative, as I am advised that he has been expending large sums of money on the premises, and since he was fully apprised of the situation of the property. Neither can I suppose that it is the purpose of the officers of the government to delay a just settlement of my accounts, with a view to countenance the slanders of my enemies. If I am to be further delayed and embarrassed, I have to request that a suit be commenced immediately.

I am advised that sundry documents in your office will be of service to me in the prosecution of my claim before the Board of Commissioners of Navy Hospitals, for commissions on my disbursements; and I have the honor, therefore, to request that you will be pleased to direct me to be furnished with copies of them accordingly. They are—

1st. The voucher for my payment to George Harrison, of \$161 91, and which is numbered 2.

2d. The voucher for my payment to Wm. S. Rogers, of \$180, and which is numbered 4.

3d. So much of Purser Butler's account, for the purchase of land near the navy yard, Brooklyn, N. Y., (on account of said commissioners,) as will show the rate and amount allowed him as commission on the purchase.

I am, respectfully, &amp;c.,

THOMAS FILLEBROWN, JR.

AMOS KENDALL, Esq.,

*Fourth Auditor of the Treasury.*

*The Commissioners of Navy Hospitals in account with Thomas Fillebrown, jr., their secretary.*

Dr.

Cr.

1826.			1826.		
February --	Cash paid J. & J. Williams -----	Voucher. 1 \$15 00	Feb. 6	By warrant No. 1 -----	\$77 50
July -----	Cash paid George Harrison -----	2 161 91	May 1	do. No. 2 -----	62 50
August ---	Cash paid Davis & Force -----	3 18 50	May 24	do. No. 3 -----	125 00
August ---	Cash paid W. S. Rogers -----	4 180 00	July 12	do. No. 4 -----	161 91
October ---	Cash paid Pratt & Bicknell -----	5 1,000 00	Aug. 10	do. No. 5 -----	198 50
	To my services as secretary to the board from May 7, 1825, to November 6, 1826, inclusive, one year and six months, at \$250 per annum -----	375 00	Oct. 24	do. No. 6 -----	1,000 00
		1,750 41			1,625 41
	Commission of one per cent. on \$1,375 41 -----	13 75		Balance -----	138 75
		1,764 16			1,764 16
	To balance due T. F., jr., and carried to new account -----	138 75			

NOVEMBER 7, 1826.

E. E.

TH. FILLEBROWN, JR.

Approved November 13, 1826.

S. L. S.

THOMAS FILLEBROWN.



DR.

*Thomas Fillebrown, jr., (Secretary,) in account with Commissioners of Navy Hospitals.*

CR.

44

Date.	No. of warrant.	Amount.	Date.	To whom paid.	Amount.
1826.			1826.		
February 6	Warrant No. 1.....	\$77 50	February —	J. and J. Williams, No. 1.....	\$15 00
May 1	do. 2.....	62 50	May 6	Services as secretary for year ending this day.....	250 00
May 24	do. 3.....	125 00	July 14	George Harrison, No. 2.....	161 91
July 12	do. 4.....	161 91	August 24	Davis & Force, No. 3.....	18 50
August 10	do. 5.....	198 50	Sept. 24	Wm. S. Rogers, No. 4.....	180 00
October 24	do. 6.....	1,000 00	October 31	Pratt & Bricknell, No. 5.....	1,000 00
November 13	do. 7.....	100 00	Nov. 15	George Harrison, No. 6.....	100 00
November 30	do. 8.....	3,300 00	December 14	Thomas Harris, No. 7.....	82 20
December 5	do. 9.....	200 00	1827.		
December 29	do. 10.....	130 00	January 6	Pratt & Bricknell, No. 8.....	3,000 00
1827.			January 19	George Harrison, No. 9.....	10,793 94
January 16	do. 11.....	10,793 94	January 29	John Haviland, No. 10.....	300 00
January 29	do. 12.....	1,450 00	March 2	John Haviland, No. 11.....	10,000 00
January 30	do. 13.....	300 00	March 14	Wm. Strickland, No. 12.....	6,000 00
February 28	do. 14.....	10,000 00	March 15	Thomas Harris, No. 13.....	101 43
March 6	do. 15.....	4,500 00	March 24	Geo. Strickland, No. 14.....	75 00
March 13	do. 16.....	101 34	March 31	Geo. Harrison, No. 15.....	1,200 00
March 21	do. 17.....	75 00	May 4	John Haviland, No. 16.....	10,000 00
March 29	do. 18.....	1,200 00	May 6	Salary for year.....	250 00
April 30	do. 19.....	10,000 00	May 9	Wm. Strickland, No. 17.....	10,000 00
May 1	do. 20.....	62 50	May 25	Geo. Harrison, No. 18.....	1,113 63
May 7	do. 21.....	10,000 00	June 14	Wm. Strickland, No. 19.....	10,000 00
May 22	do. 22.....	1,113 63	June 23	John Haviland, No. 20.....	10,000 00
June 11	do. 23.....	10,024 87	July 7	Wm. Strickland, No. 21.....	10,000 00
June 21	do. 24.....	10,000 00	August 22	John Haviland, No. 22.....	15,000 00
July 5	do. 25.....	10,000 00		Wm. Strickland, No. 23.....	10,000 00
August 6	do. 26.....	62 50		Wm. Strickland, No. 24.....	10,000 00
August 15	do. 27.....	15,000 00	Sept. 20	John Haviland, No. 25.....	10,000 00
August 20	do. 28.....	10,000 00	Nov. 2	Thomas Harris, No. 26.....	500 00
September 17	do. 29.....	10,000 00	Nov. 17	Thomas Harris, No. 27.....	100 00
September 26	do. 30.....	10,000 00			

THOMAS FILLEBROWN.

October 31	do 31	562 50	1828.			
November 15	do 32	300 00	February 29	John Haviland, No. 28	1,200 00	
1828.			March 20	Wm. Strickland, No. 29	5,000 00	
January 3	do 33	200 00	April 15	Wm. Strickland, No. 30	4,505 94	
January 30	do 34	1,450 00	May 6	Salary for the year	250 00	
February 29	do 35	1,200 00	May 15	Wm. Strickland, No. 31	5,000 00	
March 18	do 36	3,550 00	June 12	Wm. Strickland, No. 32	10,000 00	
April 11	do 37	4,405 94	June 18	John Haviland, No. 33	15,000 00	
May 13	do 38	5,000 00	July 17	Wm. Strickland, No. 34	10,000 00	
June 9	do 39	10,000 00	October 6	Wm. Strickland, No. 35	10,000 00	
June 17	do 40	25,100 00	October 7	John Haviland, No. 36	10,000 00	
October 3	do 41	20,175 00	Nov. 17	John Haviland, No. 37	5,000 00	
November 13	do 42	5,000 00	December 4	J. Arnett, No. 38	63 52	
November 24	do 43	200 00	December 16	T. Harris, No. 39	500 00	
December 4	do 44	63 52	1829.			
December 11	do 45	500 00	February 10	T. Harris, No. 40	1,000 00	
1829.			February 6	Salary for three quarters	187 50	
February 10	do 46	1,100 00				207,848 48
March 2	do 47	910 17		Commissions, 1 per cent. on amount disbursed	2,007 84	
March 31	do 48	20,000 00				209,856 32
			April 4	John Haviland, No. 41	10,000 00	
			April 14	Wm. Strickland, No. 52	10,000 00	
						229,856 32
		\$229,856 32				

SEPTEMBER 7, 1829.

Mr. Fillebrown, it appears, was appointed secretary in November 7, 1825. He can be entitled to pay as such only from the date of his appointment. The allowance of one per cent. on the moneys disbursed cannot be allowed, unless authorized by some existing law; none such is known to the commissioners; of course they cannot have authority to admit it.

J. H. EATON,  
JOHN BRANCH.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, May 22, 1830.*

I certify the foregoing to be a correct transcript of the original on file, with report No. 226, dated September 10, 1829.

AMOS KENDALL.

*The Commissioners of Navy Hospitals to Thomas Fillebrown, jr.,  
their secretary, Dr.*

For my salary as secretary, from February 7 to May 16, 1829, three months ten days, at \$250 per annum.....	\$69 36
--	---------

For my commission as disbursing officer on the following payments:

1829, March 3. To T. Newton for land \$9,000	
April 4. To J. Haviland, (advance) .....	10,000
April 14. To W. Strickland, (advance).....	10,000

29,000 at one per cent.	290 00
-------------------------	--------

For short charge of commission in act rendered March 2, 1829, viz:

On \$207,848 48, at one per cent.....	2,078 48
Deduct amount charged and incurred..	2,007 84

70 64

430 00

E. E.

TH. FILLEBROWN, JR.

TREASURY DEPARTMENT,  
*Fourth Auditor's Office, December 7, 1829.*

I certify the within to be a correct transcript of the original account of Thomas Fillebrown, jr., on file in this office, with report No. 353, dated October 31, 1829.

T. H. GILLISS,  
*Acting Fourth Auditor.*

## TREASURY STATEMENTS.

- 1st. Contracts made in 1829.
- 2d. Payments, Miscellaneous Claims.
- 3d. Payments, &c., Collectors' Revenue.
- 4th. Payments, sick and disabled seamen.

FEBRUARY 9, 1830.—Read and laid upon the table.

TREASURY DEPARTMENT, *February 8, 1830.*

SIR: In obedience to the act "concerning public contracts," approved April 21, 1808, and the "act further to amend the several acts for the establishment and regulation of the Treasury, War, and Navy Departments," approved the 2d of March, 1809, I have the honor to transmit—

*First* Statement of contracts made during the year 1829.

*Second.* A statement of payments made according to law, at the treasury of the United States, during the year 1829, for the discharge of miscellaneous claims, not otherwise provided for.

*Third.* A statement of the contracts and purchases made by collectors, for the revenue service, during the year 1828.

*Fourth.* A statement of the expenditure of the marine hospital fund for the relief of sick and disabled seamen, during the year 1828.

I have the honor to be, respectfully, your obedient servant,

S. D. INGHAM,

*Secretary of the Treasury.*

Hon. SPEAKER *House of Representatives.*

*Statement of contracts made during the year 1829.*

Date and duration of contract.	Object or thing contracted for.	Contractors' names.	Sum to be paid.	Places where to be performed or delivered.
February, 1829, to February, 1830-----	Medical services to sick and disabled seamen.	Dr. C. A. Beatty-----	\$100 00	Georgetown, D. C.
April 2, 1829 -----	Erection of a custom-house at Portland, Me.-	Nathan Howe, Henry Dyer, and Eben. Wilson.	14,035 00	Portland, Me.
April 1, 1829, to April 30, 1830 -----	Lodging, boarding, medicines, and medical aid to sick and disabled seamen.	Drs. Martin and Matthews.	1,083 33	Elizabeth City, N. C.
June 30, 1829, to April 30, 1830 -----	-----do-----do-----	Board of managers of Savannah poor-house.	1,500 00	Savannah, Ga.
June 17, 1829-----	Erection of a custom-house at Newport-----	William Tallman & James C. Bucklin.	7,900 00	Newport, R. I.
May 1, 1829, to April 30, 1830-----	Lodging, boarding, medicines, and medical aid to sick and disabled seamen.	Dr. Danforth P. Wight----	400 00	Barnstable, Mass.
September 30, 1829, to April 30, 1830-----	-----do-----do-----	Dr. R. Randolph -----	466 67	Petersburg, Va.
Do-----do-----	-----do-----do-----	Nathan Coral -----	266 00	Bath, Me.
Do-----do-----	Medicine and medical aid to sick and disabled seamen.	Dr. Timothy W. Waldron--	23 34	Do.
October 1, 1829, to April 30, 1830-----	Lodging, boarding, medicine, and medical aid to sick and disabled seamen.	Dr. Daniel Fisher-----	95 00	Edgartown, Mass.
October 16, 1829 -----	Building a revenue cutter -----	Webb & Allen-----	6,540 00	New York.
April 1, 1829, to June 30, 1829-----	Supply of rations to crew of revenue cutter Vigilant.	John Cahoon, per ration--	20	Newport, R. I.
July 1, 1829, to September 30, 1829 -----	-----do-----do-----	-----do-----do-----	20	Do.
October 1, 1829, to December 31, 1829-----	-----do-----do-----	-----do-----do-----	20	Do.
November 6, 1829, to January 6, 1830--	Supply of rations to crew of revenue cutter Portsmouth.	Charles Waldron-----	13½	Portsmouth, N. H.

NOTE.—The collector at Portsmouth was authorized, on the 20th of June, 1829, to contract for the purchase of a vessel, for the sum of \$1,635, to be employed as a revenue cutter on the New Hampshire station. This, with other contracts in relation to the repairs of cutters and boats for revenue purposes, will be included in the next annual report of the Register.

S. D. INGHAM, *Secretary of the Treasury.*

TREASURY DEPARTMENT, *February 8, 1830.*



*Statement of payments made according to law at the treasury of the United States during the year 1829, for the discharge of miscellaneous claims not otherwise provided for; stated in pursuance of the act of March 3, 1809.*

Warrants.		In whose favor.	Amount.
No.	Date.		
2134	1829. March 3	To George Gibbs for services in 1822 in taking an inventory and an account of all the Spanish documents and archives.....	\$135 00
2134	----do----	To John A. Cavedo ----do-----	81 00
2134	----do----	To John M. Fontaine ----do-----	81 00
			\$297 00
2135	----do----	To James G. Ringgold, attorney of the United States for the middle district of Florida, for his compensation for arguments before the court of appeals for the Territory of Florida in the case of the Register and Receiver against Robinson & Swearingen, and Lewis Gregory ---	300 00
2136	----do----	To William Wirt, for his fee in the case of the United States against the Bank of Somerset, in the circuit court of the United States for the district of Maryland.	500 00
2137	----do----	To Fulwar Skipwith, for sundry expenses incurred and defrayed by him, in Paris, in the prosecution of the claim of the United States against the estate of Joseph J. Miller, one of the firm of Whelan & Miller, for the sum of \$23,616 50.....	299 06
2139	----do----	To Richard S. Coxe, for his professional services in assisting the Attorney General at a session of the Supreme Court of the United States, January term, 1827, in three cases in which the United States were parties....	750 00
2140	----do----	To Benjamin L. Lear, for his professional services in the negotiation and conveyance in relation to the Northumberland estate, in Virginia, and in relation to the proper conveyance of two houses on Greenleaf's Point from the Columbian College to the United States ----	80 00
2142	----do----	To Samuel Fry, for his services as clerk in the office of the secretary of West Florida from July 31 to October 7, 1821 ----	207 00
2145	----do----	To Henry Eddy, for balance due to him for drafting a bill in chancery against the corporation and individuals composing the President, Directors, & Company of the Bank of Edwardsville, its trustees and debtors, and prosecuting the same in the district court of Illinois from April, 1825, to June, 1828, including expenses of all kinds ----	400 00
2146	----do----	To Henry M. Breckenridge, for services in examining the translations of two folio volumes, containing about 900 pages, of all the documents relating to lands in West Florida, commencing November 1 and ending December 1, 1828.....	120 00
2147	----do----	To Henry M. Breckenridge, for services rendered as interpreter and translator to the governor of Florida from July 17 to October 8, 1821.....	225 00
2182	March 10	To John H. Owen, receiver of public moneys at St. Stephens, for his services in discharge of his duties under the provisions of an act of Congress confirming the reports of the register and receiver at St. Stephens, passed March 2, 1829 ----	250 00

## STATEMENT—Continued.

Warrants.		In whose favor.	Amount.
No.	Date.		
2202	1829. March 14	To Thomas Scott, attorney and agent for the Treasury Department in the ejectment case of the lessees of Duncan McArthur <i>vs.</i> John Reynolds, &c., for his services and expenses.....	\$1,023 20
2141	3	To William Clark, agent in transmitting cents to banks and custom-houses, for amount of his payments to his agent, James Rush, for payments made by him, for freight, insurance, cooperage, portorage, &c., including his agent's commission on \$13,961 24.....	\$559 15
2387	April 6	Same .....	116 19
335	July 23	To James Rush, agent for the Treasurer of the United States for ditto, including commission on \$8,475.....	\$104 59
744	Oct. 20	Same .....	182 39
2449	April 29	To William Doherty, for amount paid by him in pursuance of instructions from the Secretary of the Treasury of the 27th August, 1827, for taxes due for the year 1828, on lands of the late Charles Simms, situate in the State of Ohio, and for information respecting said lands, with which sum Charles Simms, late collector of Alexandria, is to be charged.....	59 75
102	June 25	To Edgar Macon, for professional services rendered in the case of the libel filed in the superior court of the southern judicial district of Florida against the United States revenue cutter Marion .....	100 00
334	July 22	To William Phillips, for amount paid by him pursuant to instructions, for taxes and costs, for the years 1826 and 1827, on two-thirds of a tract of land, containing 509½ acres, in Toby township, Pennsylvania, levied on by the United States as the property of Francis Johnson, one of the securities of Sharp Delany, late collector of the customs, Philadelphia.....	23 75
52	Sept. 18	To John M. Berrien, Attorney General, for his expenses and services to and at New York, in examining into the affairs of the house of Thomas H. Smith & Son.....	500 00
733	Oct. 17	To Olmsted & Bailhache, being for publishing in the Ohio State Journal the notice of the surveyor of the Virginia military land district, in the State of Ohio, as required by the act of 24th February, 1829.....	5 00
832	Nov. 20	To Benjamin Cowell, clerk of the district court of the United States for Rhode Island, being the expense incurred by him in 1828, in advertising "an act extending the time for the redemption of land sold for direct taxes." .....	8 25
			6,110 33

T. L. SMITH, *Register.*TREASURY DEPARTMENT, *Register's Office, January 16, 1830.*

*A statement of contracts and purchases made by collectors for the revenue service during the year 1828.*

Collectors.	Districts.	Contractors, or from whom purchased or hired.	Vessels in the service, including cutters.				Weights, scales, gauging instruments, &c.	Total.
			Payments for vessels purchased.	Vessels hired.		Supplies, including rations.		
				*Rate per month.	Time.			
				Mos. Ds.				
Stephen Thacher -----	Passamaquoddy -	H. D. Hunter -----				\$2,287 95		\$3,181 04
		Lemuel Crackbon -----				181 82		
		Robert Huston -----				471 68		
		C. Noyes and Gideon Stetson --				239 59		
Samuel A. Morse -----	Machias -----	D. Sawyer -----	\$13 00					13 00
Josiah Hook -----	Penobscot -----	William Foster -----	100 00					100 00
Daniel Lane -----	Belfast -----	Joshua Dillingham -----	67 00					67 00
John B. Swanton -----	Bath -----	Cornelius Jarber -----			56	\$51 12		51 12
Isaac Hsley -----	Portland -----	Ruel Drinkwater -----				682 60		809 60
		Lemuel Dyer -----	107 00					
		Wyre Nobb & Co -----					\$20 00	
Timothy Upham -----	Portsmouth -----	William Pearce -----		\$5 00	6 00	30 00		30 00
H. A. S. Dearborn -----	Boston -----	Samuel R. Trevett -----				1,830 00		2,669 25
		B. Dearborn, and A. Babcock & Co.					839 25	
Russell Freeman -----	New Bedford -----	W. White and others -----	130 00					130 00
Thomas Cook, jr. -----	Edgartown -----	W. Cranston & Son, and William Coffin.	210 00					210 00
Nathaniel Bullock -----	Bristol -----	James Coit and W. H. Pitman --	72 69					72 69
Christopher Ellery -----	Newport -----	John Cahoon -----				1,063 26		1,063 26
Richard Law -----	New London -----	Frederick Lee -----				1,182 51		1,182 61

## STATEMENT—Continued.

52

THOMAS FILLBROWN.

Collectors.	Districts.	Contractors, or from whom purchased or hired.	Vessels in the service, including cutters.				Weights, scales, gauging instruments, &c.	Total.
			Payments for vessels purchased.	Vessels hired.		Supplies, including rations.		
				Rate per month.	Time.			
				Mos. Ds.				
Mathew Myers .....	Oswegatchie .....	Ab. S. Cummins .....	\$30 00	-----	-----	-----	-----	\$30 00
Jonathan Thompson ..	New York .....	Henry Cahoon and others .....	-----	-----	-----	\$3,359 81	\$781 85	4,141 66
Thomas Forster .....	Presque Isle .....	Justice & Richards, and others .....	3,661 86	-----	-----	-----	-----	3,661 86
William Jones .....	Philadelphia .....	W. W. Polk and others .....	124 00	-----	-----	6,635 65	97 00	6,856 65
Allen McLane .....	Delaware .....	Peter Maull .....	66 00	-----	-----	-----	-----	66 00
James H. McCulloch ..	Baltimore .....	J. A. Webster and others .....	-----	-----	-----	3,229 34	58 90	3,288 24
Moses Myers .....	Norfolk .....	J. McKenzie, J. S. Westwood, and others .....	-----	-----	-----	3,773 13	-----	3,773 13
James R. Pringle .....	Charleston .....	Jos. Doan, Wilkie, and others .....	333 87	-----	-----	8,534 90	25 00	8,893 77
John Stevens .....	Savannah .....	Thomas Payne .....	-----	-----	-----	1,837 75	-----	} 3,536 72
		Bradley, Cleghorn, and Wood .....	-----	-----	-----	1,335 29	-----	
		Rahn & Ryerson, and others .....	-----	-----	-----	272 20	91 48	
John N. McIntosh .....	Brunswick .....	Jacob Roenbaugh .....	-----	-----	-----	823 50	-----	823 50
Archibald Clarke .....	St. Mary's .....	John Stotesburg .....	-----	-----	-----	638 17	-----	638 17
William Pinkney .....	Key West .....	W. & E. De La Montague .....	100 00	-----	-----	-----	-----	100 00
David L. White .....	Apalachicola .....	Samuel Shannon and others .....	-----	-----	-----	37 71	-----	37 71
Addin Lewis .....	Mobile .....	G. Harrison and Wm. Foster .....	-----	-----	-----	4,534 06	-----	} 6,286 84
		Joseph Hall & Co .....	-----	-----	-----	703 11	-----	
		Henry Spearing .....	-----	-----	-----	545 74	-----	
		J. Campbell, P. Launsury, and others .....	-----	-----	-----	503 93	-----	

Beverly Chew -----	New Orleans-----	J. Jacks and J. Doane-----	-----	-----	-----	2,658 92	-----	} 4,527 06	
		Robert Layton -----	-----	-----	-----	1,299 76	-----		
		R. Garrison and others -----	-----	-----	-----	293 25	-----		
		John A. Merle -----	-----	-----	-----	-----	162 23		
Robert Mitchell-----	Pensacola-----	Forster & Hutton-----	112 90	-----	-----	-----	-----	} 86 71	
		N. Allen and others-----	-----	-----	-----	86 71	-----		
			-----	-----	-----	-----	-----		
			5,128 32	5 00	6 56	81 12	49,042 34	2,075 71	56,327 49

TREASURY DEPARTMENT, December 29, 1828.

T. L. SMITH, Register.



*Statement of contracts made relative to light-houses, floating-lights, beacons, buoys, stakeages, &c.*

54

Date.	Object.	Contractors.	Price.
1827.			
Dec. 1	Building a house for the keeper of Cape Hatteras light-house.....	Pharaoh Farrow.....	\$1,200 00
1828.			
Aug. 12	Building a light-house, dwelling house, &c., on Cove Point, in Maryland.....	John Donahoo.....	5,685 00
4	Fitting up light-house with, patent lamps, reflectors, &c.....	James Geddes.....	550 00
27	Building a light-house and dwelling house at Portland harbor, on Lake Erie, in New York.....	Thomas B. Campbell.....	2,700 00
	Fitting up light-house, with patent lamps, reflectors, &c.....	Thomas B. Campbell.....	650 00
Sept. 6	Building a light-house and dwelling house on Pamlico Point, North Carolina. ....	Benjamin Runnyon.....	4,950 00
Nov. 1	Fitting up light-house, with patent lamps, reflectors, &c.....	Winslow Lewis.....	700 00
Sept. 15	Rebuilding floating light-vessel, stationed at Smith's Point, in Virginia.....	Isaac Talbott.....	4,000 00
Dec. 22	Erecting a tower, with a bell and clock machinery, on Pool's island, in Maryland.....	William Simpson.....	1,900 00
1829.			
Mar. 10	Fitting up the light-house on the west chop of Holmes' Hole with new patent lamps, reflectors, &c.....	Winslow Lewis.....	245 00
April 10	Placing and keeping stakes, buoys, and flag-staffs in Providence river.....	Asa Armington.....	132 00
30	Building a light-house, dwelling house, &c., near Fort Gratiot, in Michigan Territory ..	Lucius Lyon.....	4,700 00
May 11	Erecting a beacon on Spindle Rock, at the mouth of Black Rock harbor, in Connecticut..	Seymour Taylor.....	5,000 00
18	Erecting a tower, with a bell and machinery, near the light-house at Beaver Tail, R. I. ..	David Melville.....	1,140 00
23	Building a light-house and dwelling house at the mouth of St. John's river, in the Territory of Florida .....	Winslow Lewis, Benjamin Beal, and Jai-us Thayer.....	9,400 00
June 6	Fitting up light-house, with patent lamps, reflectors, &c.....	Winslow Lewis.....	800 00
May 23	Building a light-house and dwelling house near St. Mark's harbor, in the Territory of Florida .....	Winslow Lewis, Benjamin Beal, and Jai-us Thayer.....	10,500 00
June 6	Fitting up light-house, with patent lamps, reflectors, &c.....	Winslow Lewis.....	900 00
19	Building a dwelling house and two light-houses on the northwest point of Block island, in Rhode Island .....	John Clark and Henry Eldred .....	3,700 00
July 11	Fitting up light-house, with patent lamps, reflectors, &c.....	Winslow Lewis.....	600 00
6	Building a dwelling house and light-house on Hendrick's head, in Maine .....	Joseph Berry.....	1,883 00
Aug 1	Erecting a monument on the eastern point of the harbor of Gloucester, in Massachusetts..	Ebenezer Bent.....	1,040 00
6	Erecting a monument on a rock near Swamsett, in Massachusetts.....	Winslow Lewis.....	1,000 00

THOMAS FILLBROWN.

10	Building a light-house and dwelling house at or near Back River Point, in the Chesapeake bay, in Virginia, and fitting up the light-house with patent lamps, reflectors, &c.....	Winslow Lewis.....	4,250 00
Sept. 5	Building a light-house and dwelling house near Otter Creek Point, in Michigan Territory, and fitting up the light-house with patent lamps, &c.....	Charles Jackson .....	3,673 00
10	Building two light-houses and two dwelling houses on the flats, two miles north of Kinderhook upper landing, called the drowned lands, in New York .....	Walter Butler.....	5,800 00
Oct. 10	Building stone walls to secure the bank of the light-houses near Kinderhook .....	Walter Butler.....	1,067 00
Dec. 15	Building a light-house and dwelling house at Cleveland, on Lake Erie, in Ohio, and fitting up the light-house with patent lamps, reflectors, &c.....	Levi Johnson & Stephen Woolverton..	3,997 00
Oct. 5	Stakeage in Core sound, including Old Topsail inlet to Beaufort, in North Carolina.....	James N. Styron.....	29 75
9	Stakeage in Albemarle sound, Crockton shoals, marshes, &c., placing buoys, &c., in North Carolina .....	Joseph Rollins.....	170 00
Nov. 6	Stakeage of the swashes, Wallace's channel, Upper roads, Teache's Hole, &c., placing buoys, &c., North Carolina .....	Benjamin Mason .....	179 00
25	Stakeage from the mouth of Pamptico river, including Pungo river, to Washington, North Carolina .....	David Watson.....	49 00
Dec. 4	Stakeage from the mouth of Neuse river to Newbern, North Carolina .....	Arvin Sampson.....	30 00

TREASURY DEPARTMENT, *Fifth Auditor's Office, January 30, 1830.*

S. PLEASANTON, *Acting Com. Rev.*

*Statement of the expenditure of the Marine Hospital Fund,*

Ports.	Agents.	Amount of expenditure.	Number admitted	Time for which the returns were made.
Belfast. ....	Daniel Lane .....	\$52 05	4	2d and 3d quarters...
Waldoborough .....	Denny M' Cobb .....	315 64	7	1st, 2d, and 4th qrs...
Wiscasset .....	Francis Cook .....	213 72	7	3d and 4th quarters...
Bath .....	John B. Swanton .....	608 02	7	4 quarters .....
Portland .....	Isaac Ilsley .....	1,300 07	-----	do .....
Passamaquoddy .....	Stephen Thacher ..	190 28	7	3d and 4th quarters..
Kennebunk .....	G. Wheelwright .....	6 06	1	3d quarter .....
Portsmouth .....	Timothy Upham .....	432 53	34	4 quarters .....
Penobscot .....	Samuel R. Gilman ..	98 53	2	2d and 3d quarters...
Barnstable .....	Isaiah L. Green .....	404 00	4	4 quarters .....
Newburyport .....	James Prince .....	10 10	5	2d, 3d, and 4th qrs..
Gloucester .....	William Pearce .....	100 49	4	1st, 3d, and 4th qrs..
Holmes' Hole .....	Thomas Cooke .....	343 40	-----	4 quarters .....
Boston. ....	H. A. S. Dearborn ..	8,102 97	477	4 quarters .....
Providence .....	Thomas Coles .....	1,082 12	61	do .....
Bristol and Warren ..	Nathaniel Bullock ..	310 94	11	do .....
Newport .....	Chris. Ellery .....	622 37	12	do .....
New London .....	Rich. Law .....	239 58	11	do .....
Middletown .....	Henry Wolcott .....	148 29	11	do .....
Sag Harbor .....	Hen. T. Dering .....	13 52	2	3d quarter .....
New York .....	Jona. Thompson .....	13,668 01	927	4 quarters .....
Great Egg Harbor ..	Gideon Leeds .....	681 38	35	4th quarter, and 1st, 1829.
Philadelphia .....	William Jones .....	8,786 80	361	4 quarters .....
Baltimore .....	Jas. H. M'Culloh .....	6,543 79	179	do .....
Georgetown .....	Thomas Turner .....	204 00	14	4 quarters .....
Alexandria .....	Humphrey Peake .....	245 76	22	do .....
Tappahannock .....	John Dangerfield .....	643 23	21	do .....
City Point .....	James Robertson .....	454 71	-----	1st and 2d quarters ..
Norfolk .....	Moses Myers .....	2,630 14	-----	do .....
Richmond .....	James Gibbon .....	478 16	-----	do .....
Elizabeth City .....	Asa Rogerson .....	1,053 21	17	do .....
Wilmington .....	James Owen .....	188 87	20	do .....
Washington .....	Thomas H. Blount ..	181 74	9	do .....
Newbern .....	Francis Hawkes .....	359 89	24	1st, 2d, and 3d quarters
Ocracoke .....	Joshua Taylor .....	765 07	-----	2d and 3d quarters...

*for the relief of sick and disabled seamen, for the year 1828.*

Place of admittance.	Rate of expenditure	Remarks.—1 per cent. commission allowed the agents in all cases.
Private houses.....	\$2 50 per week...	With passage money and doctor's bill.
Do .....	\$1 to \$2 per week...	With doctor's bill, &c.
Do .....	\$2 to \$3 per week...	With doctor's bill and passage money, &c.
-----	-----	Amount paid to the steward, physician, &c., per agreement for the year.
-----	-----	Amount received, paid to the overseers of the poor, by contract, for the relief of the sick and disabled.
Private houses.....	-----	With physician's bill for visits and medicine, funeral expenses, &c.
Do .....	33 $\frac{1}{3}$ cents per day...	With passage money to Boston.
Do .....	\$2 50 to \$2 80 per week.	With passage money, doctor's bills, funeral expenses, &c.
Do .....	\$2 50 to \$3 50 per week.	With physician's bills, visits, and medicine.
-----	-----	With physician, \$400 per annum, by agreement.
-----	-----	Passage money, and stage to the hospital.
Private houses.....	\$2 50 to \$4 per w'k	With doctor's bills, &c.
-----	-----	Boarding and all other expenses, per agreement per year, for all that arrive at the port.
Chelsea hospital....	All expenses .....	Physician, \$1,000 per annum; steward, \$500; medicine, passage money, &c.
Private houses.....	-----	Doctor's visits, medicine, funeral expenses, &c.
Do .....	\$2 to \$2 50 per w'k.	Passage money and funeral expenses, with doctor's bill.
Hospital.....	\$2 50 to \$3 per w'k.	Physician, \$400 per annum, passage money &c.
Private houses.....	\$2 50 per week...	Physician, \$150 per annum.
Do .....	\$2 to \$2 50 per week.	Physician, attendance and medicine, passage money, and funeral expenses.
Do .....	-----	Do. do. do.
Hospital .....	\$3 per week .....	All expenses, superintendent, \$250, funeral expenses, \$5 each; 74 deaths.
Private houses.....	\$1 50 to \$3 per week.	Doctor's bill for visits and medicine, with funeral expenses.
Penn. hospital .....	50 cents per day...	Including all expenses, except funerals and clothing; these separate charge.
Marine hospital .....	-----	Including all expenses, with \$31 passage money, and \$60 extra medicine.
Private houses.....	\$2 to \$3 per week...	Doctor's bill, \$100 per annum.
Alms house .....	-----	Board, medical attendance, &c.
Private houses.....	\$2 50 to \$3 per week	With doctor's bills, attendance and medicine.
do .....	-----	No returns of the number of men, nor of their expenses. This charge for doctor's salary.
Marine hospital .....	-----	Including all expenses, with physician's salary, \$840 per annum.
do .....	-----	Ditto, physician and superintendent, per contract, \$450 per annum, and bill of medicine.
Private houses.....	\$1 25 to \$2 50 per week.	Number of men for 1st quarter, doctor's bills and medicine 2d, 3d, and 4th quarters, by contract, at \$225 per quarter.
-----	50 cents per day...	Including board, medical attendance, &c.
-----	\$3 per week.....	With doctor's bill and medicine.
-----	do .....	Ditto, and funeral expenses.
-----	-----	Supported by contract, at \$1,500 per annum, funeral expenses added.

## STATEMENT

Ports.	Agents.	Amount of expenditure.	Number admitted.	Time for which the returns were made.
Plymouth .....	Levi Fagan .....	\$78 67	6	4 quarters .....
Edenton .....	Samuel Tredwell .....			No returns .....
Beaufort .....	James Manney .....	64 89	2	3d quarter .....
Charleston .....	James R. Pringle .....	3,994 58		4 quarters .....
Georgetown .....	Thomas L. Shaw .....	38 38	1	3d quarter .....
Savannah .....	John Stephens .....	2,373 24		4 quarters .....
Darien .....	John N. McIntosh .....	22 72	1	4th quarter .....
St. Augustine .....	John Rodman .....	150 87	4	2d, 3d, and 4th quart's
Pensacola .....	Robert Mitchell .....	65 64	10	do .....
Mobile .....	Addin Lewis .....	604 29	28	4 quarters .....
New Orleans .....	Beverly Chew .....	7,708 06	324	4th quarter .....
Key West .....	William Pinckney .....	496 11	24	4 quarters .....
		67,076 89	2,692	



—Continued.

Place of admittance.	Rate of expenditure.	Remarks.—1 per cent commission allowed the agents in all cases.
-----	\$1 50 to \$2 per week	With doctor's bills, medicine, funeral expenses, and passage money.
-----	50 cents per day---	Board, &c, medical visits, and medicine.
-----	-----	This sum includes moneys paid city treasurer, and payments made for the sick on board the revenue cutter Marion, and some other charges. Contract with the city to pay all expenses in the port, for moneys received by the collector for this object.
-----	\$3 per week-----	With doctor's bill, for visits and medicine.
-----	-----	Supported by contract 1st and 2d quarters, at \$2,500 per annum; 3d and 4th, at \$1,800, with \$100 per inspector, with funeral expenses and passage money.
-----	\$3 per week-----	Board and nursing.
-----	do-----	With doctor's bill, medicine, and passage money.
-----	\$1 25 per day-----	Attendance.
City Hospital-----	50 to 75 cts. per day	Including all expenses, doctor's visits on board vessels, medicine, and funeral expenses.
Hospital-----	75 cents per day---	Physician's salary, \$1,000 per annum; also, charge for apothecary and matron; also included \$250, for 1st and 2d quarters, for 30 men at Louisville hospital, allowed by direction of the President of the United States.
-----	\$4 to \$5 per week--	Doctor's bill, medicine, and funeral expenses.

T. L. SMITH, *Register*.TREASURY DEPARTMENT, *Register's Office, January 16, 1830.*

NAVY DEPARTMENT, *2d March, 1829.*

SIR: It was my intention before I left the department to have submitted to the consideration of the other commissioners of the navy hospital fund your claim and account for compensation for attending to the disbursement of the moneys of the fund which have passed through your hands since your appointment as secretary. I consider the claim perfectly just, and do not doubt but a fit compensation would have been made could the question have been submitted to the board. Neither the responsibility nor the labor are embraced within your duties as secretary, and if any other person had been appointed to perform them, an allowance must necessarily have been made to him.

I do not doubt when the commissioners shall understand the merits of the claim, that no hesitation will be felt on the subject.

Nothing but my severe and protracted indisposition during the whole winter, has heretofore prevented its adjustment.

I am respectfully, &c.,

SAM. L. SOUTHARD.

THOMAS FILLEBROWN, Esq.,  
*Secretary navy hospital fund, Washington.*

*Deposition of John H Eaton.*

Questions to be propounded to the Hon. John H. Eaton, Secretary of War, and one of the Commissioners of Navy Hospitals, which, with the answers thereto, are to be given and received as evidence on the trial of the suit instituted against Thomas Fillebrown, jr.

*Question 1st.* Has it not heretofore been, and is it not now, the practice of the government, in the service connected with the War Department, to allow to officers called on to make disbursements of public money, other than such as come within their usual and proper duties, to allow a premium or per centage on such disbursements; and is not two and a half per centum the usual allowance in such cases?

*Answer.* Officers of the engineer corps superintending "fortifications," are, by regulation of the War Department, allowed two dollars extra a day, upon condition that it shall not exceed two and a half per cent. upon the amount by them disbursed; principals too, engaged on topographic duty, are placed upon the same footing as those who are in the superintendence of fortifications. This does not extend to assistant quartermasters and commissaries. When thus acting, they are authorized to receive not exceeding twenty dollars a month.

*Question 2d.* Before you placed your official signature to the remarks appended to Mr. Fillebrown's account, (upon which account the suit now pending is based,) was he called on for explanation, or were any vouchers or papers relative thereto examined by you, and did you examine the merits of his claim before signing said remarks?

*Answer.* I do not now recollect the particulars of Mr. Fillebrown's account, or the grounds and reasons upon which I decided. His claim,

I believe, rested upon an allowance of — per cent. for disbursements of public moneys, the hospital fund. His demand for this allowance is based on the ground that it is a usage of the government. Had any established regulations been produced to me, I should have felt myself authorized to admit the force of them and to be controlled by them.

*Question 3d.* Did you not, at the time of signing said paper, consider it a matter of official form, to give validity to a transaction, the particular details of which were more immediately the duty of other officers of the government; and had you been called on to examine into the merits of the case, as subsequently explained to you by the papers exhibited by Mr. F., would you not have considered his charges reasonable and proper?

*Answer.* I did not consider it "matter of official form." I did not act upon such grounds. My reasons were these: unacquainted with the rules and practice of the Navy Department, which more particularly had charge of the hospital fund, under and by virtue of the practice of the government, I was uninformed of any settled and established practice, and hence looked as a guide to what the law directed. In the acts of Congress regulating this disbursement, I could find no authority sanctioning it, nor was I apprised of any settled practice of the government which gave it sanction. There are many *regulations* as to allowances, (I speak in reference to the War Department,) which, as regards disbursements, have and do receive all the force and effect of enactments by Congress. Officers superintending fortifications, or principals employed on topographic duty—officers with brevet rank conferred; those detailed for duty in the military bureau offices, all receive additional allowances, which grow out of regulations of the department, and are not the result of any enacted laws upon the subject. Double rations, and the commutation of them in the several bureaus attached to the War Department, are matters of regulation heretofore in former times established, and not of legislative enactment.

*June 7th, 1830.* In my own handwriting are the answers.

J. H. EATON.

*George W. Dashiell's evidence.*

It was proved by George W. Dashiell, on the part of the United States, that William Brown was a clerk in the State Department upon a fixed salary; and that Edward Jones, John Laub, Enoch Reynolds, William Parker, John Wells, jr., George Macdaniel, Nicholas Harper, and himself, were clerks in the Treasury Department, in the year 1828, upon fixed salaries; and that Samuel D. King was a clerk in the General Land Office; and that Lewis Edwards, Nathaniel Fry, Nathan Towson, Brooke Williams, Thomas G. Ringgold, William Wade, Alfred Mordecai, and Trueman Cross, were all clerks in the War Department upon fixed salaries; and that Benjamin Homans was a clerk in the Navy Department also upon a fixed salary; and that the moneys for the payment of clerk hire in those departments were disbursed by these officers; and that Peter Hagner, the Third Auditor,

and Roger Jones, the Adjutant General, and Alexander McComb, Chief Engineer, and that Mr. Suter, a clerk in the Post Office, under the direction of the Postmaster General, annually disbursed the moneys necessary for the contingent expenses of their departments; and the said witness further proved that he was and is still a clerk in the Treasury Department, and that the warrants of these disbursements pass through his hands into the hands of the different clerks and officers who are to disburse them as above, and that he has no knowledge that any commission or compensation was ever paid or allowed by the government for these disbursements.

The accounts of said officers, not passing through the hands of witness, he has no knowledge whether or not they either claimed or received any compensation in the shape of commissions or otherwise, for making said payments. The said several officers, in making said payments, and keeping said accounts, were always understood to be performing duties properly appertaining to the offices they respectively held.

*George Macdaniel's evidence.*

George Macdaniel proved that he had been, for about twenty years, a clerk in the office of the Fourth Auditor; that he disbursed the contingent funds of the navy, as special agent of that department; and, during the said period, he regularly settled his accounts, charged a commission on said disbursements, which was always allowed until about the time of his ceasing to perform the said duties in 1829; that, during the same period, he also paid to the several clerks in the Fourth Auditor's office their salaries; this he always considered an official duty; and he never either charged or received a commission therefor.

And before the jurors aforesaid withdrew from the bar of the court here, the said United States, by their attorney aforesaid, filed in court here, the following second bill of exceptions, to wit:

*Second bill of exceptions.*

THE UNITED STATES }  
                   *against* }  
 THOMAS FILLEBROWN, Jr. }

Upon the trial of this cause, the defendant offered to prove, by the testimony contained in the preceding bill of exceptions, the general usage of the different departments of the government in allowing commissions to the officers of government upon disbursements of money under a special authority not connected with their regular official duties. The counsel of the United States objected to the admission of parol evidence to prove such usage. But the court permitted the evidence to be given, and the same was given accordingly. To which opinion and admission of the court, the plaintiffs, by their counsel except, and this their bill of exceptions is signed, sealed, and ordered to be enrolled this 26th of May, 1831.

WILLIAM CRANCH. [SEAL.]  
 JAMES S. MORSELL. [SEAL.]

*Extract from "statement showing the names and the amount paid to officers of the army of the United States for extra services, to whom paid, and for what, and where employed, in the years 1822, 1823, 1824, and 1825, ascertained from accounts settled in the office of the Third Auditor, prepared in pursuance of a resolution of the House of Representatives of March 6, 1826," being report of the Third Auditor, document 41, House of Representatives, 19th Congress, and 2d session, referred to in exceptions at page 22.*

Names and rank.	Purposes, places, and periods.	Amount.
Abert, J. J., Major-----	Per diem while surveying Potomac canal, from July 1 to October 8, 1824-----	\$141 00
	Per diem while on topographical duty, surveying from May 24 to August 4, 1823-----	124 50
	Per diem while surveying Chesapeake and Ohio canal, from September 27 to November 15, 1825-----	75 00
	Commissions on disbursements in relation to said canal in the second, third, and fourth quarters of 1825-----	161 27
		<hr/> 501 77 <hr/>
Bernard, Simon, General---	Extra services as member of the Board of Engineers in January and February, 1822-----	265 50
	Extra services from March 11 to April 30, 1822-----	274 50
	Extra services whilst surveying Chesapeake and Delaware canal, from July 15 to 27, 1823----	58 60
	Extra services from September 17 to December 31, 1823-----	477 00
	Extra services whilst surveying the harbor of Erie, from July 28 to September 6, 1823----	229 50
	Extra services on survey, &c., from May 7 to July 31, 1824-----	387 00
	Extra services whilst engaged on canal routes from the Ohio to Lake Erie, and from Pittsburgh to Philadelphia, from August 1 to October 31, 1824-----	414 00
	Extra services whilst employed in relation to a canal across the Isthmus of Cape Cod and between Boston harbor and Taunton river, from November 1 to December 11, 1824-----	180 00
	Extra services as member of the Board of Engineers, 14 days, between August 5 and October 31, 1825-----	63 00
	Extra services on Chesapeake and Delaware canal from January 1 to 24, 1824-----	108 00
		<hr/> 2,457 10 <hr/>
Bankhead, James, Major---	Two and a half per cent. commission on his disbursements at Fort Moultrie in the first and second quarters of 1822-----	67 36
	Two and a half per cent. commission in the first quarter of 1824-----	2 62



## EXTRACT—Continued.

Names and rank.	Purposes, places, and periods.	Amount.
Bankhead, James, Major— Continued.	As member of a court-martial at New London in June, 1822 -----	\$99 66 <hr/> 169 64 <hr/>
Burch, E, Daniel, Captain--	Two and a half per cent. on disbursements in the quartermaster's department at Louisville, Kentucky, in the third quarter of 1822 ----- As witness to a court-martial at Baton Rouge in February and March, 1823 ----- Per diem allowance of three dollars per day for marking out a road from Pensacola to St. Au- gustine, from October 21 to December 30, 1823-----	49 93  157 20  234 00 <hr/> 441 13 <hr/>
Babcock, Samuel, Major----	Two and a half per cent. on his disbursements at Fort Delaware during the year 1822 ----- Per diem allowance for disbursements, from Jan- uary 1 to October 31, 1823----- Two and a half per cent. commission on disburse- ments, from January 27 to September 30, 1824. Two and a half per cent. commission on disburse- ments in relation to the Ohio and Mississippi rivers in 1825-----	669 52  608 00  300 73  36 36 <hr/> 1,614 61 <hr/>
Bache, Hartman, Captain---	Per diem whilst employed surveying coast of South Carolina, from February 15 to April 18, 1822 ----- Per diem whilst surveying, from August 12 to November 3, 1822----- Per diem whilst surveying, from March 6 to June 6, 1823----- Per diem whilst surveying the Susquehanna, from July 26 to August 31, 1823----- Per diem whilst surveying coast of South Caro- lina, from February 10 to May 26, 1824----- Per diem whilst surveying coast of South Caroli- na, from December 24, 1824, to June 29, 1825. Per diem whilst surveying at Holmes' Hole, Massachusetts, from November 4 to 19, 1825-- Two and a half per cent. commission on his dis- bursements at Charleston, South Carolina, from March 26 to September 30, 1825 ----- Two and a half per cent commission on his dis- bursements at Holmes' Hole, in four quarters of 1825 -----	94 50  126 00  139 50  55 50  160 50  282 00  24 00  133 22  4 67 <hr/> 1,019 89 <hr/>
Bradford, William, Major--	Two and a half per cent. commission on disburse- ments made by him at Fort Smith, from Janu- ary 1, 1818, to February 28, 1822-----	90 17 <hr/>

## EXTRACT—Continued.

Names and rank.	Purposes, places, and periods.	Amount.
Brewerton, Henry, Lieutenant.	Two and a half per cent. commission on disbursements at Fort Jackson in the second quarter of 1823.....	\$94 05
	Two and a half per cent. commission on disbursements at Mobile Point in the third quarter of 1823.....	65 75
	Two and a half per cent. commission on disbursements at Mobile Point, first quarter of 1824 ..	7 50
	Extra pay for issuing provisions at Fort Jackson, from November 6 to 30, 1824.....	16 16
	Per diem allowance as disbursing officer, &c., at New York, from April 1 to June 30, 1824, on account of fortifications.....	182 00
		365 96
Brown, Jacob, Lieutenant..	Two and a half per cent. commission on disbursements on the barracks at Baton Rouge, first and second quarters of 1824, as assistant quartermaster .....	102 28
Chase, H., William, Captain.	Per diem allowance as disbursing officer on the Gulf of Mexico, for the year 1822, on account of fortifications.....	639 50
	Per diem allowance at the Rigolets, from January 1, 1823, to June 10, 1824 .....	1,094 00
	Per diem allowance at Plymouth Beach, from August 1 to November 13, 1824; from August 1 to 17, surveying the beach previous to the repairs of the same; from August 18 to November 18, 1824, as agent of fortifications in the repairs of Plymouth Beach .....	201 50
	Per diem allowance as agent of fortifications at the Rigolets and Chef Menteur, from July 1 to September 30, and from November 1 to December 31, 1824.....	368 00
	Per diem allowance from January 1 to September 30, 1825.....	546 00
		2,849 00
Childs, Thomas, Lieutenant	Two and a half per cent. commission on his disbursements at Fort Washington, in third quarter of 1824, as assistant quartermaster.....	64 62
Clitz, John, Lieutenant....	Two and a half per cent. commission on disbursements on account of the military road from Sackett's Harbor to Plattsburg in 1823 and 1824 .....	50 79
	As witness to a court-martial at West Point, in August, 1825.....	44 60
		95 39

## EXTRACT—Continued.

Names and rank.	Purposes, places, and periods.	Amount.
Delafield, Richard, Lieutenant.	Two and a half per cent. commission on disbursements made by him on fortifications at New York, to first quarter of 1822 .....	\$106 16
	Per diem allowance as disbursing officer at Plaquemine Bend, from February 1, 1824, to September 30, 1825 .....	1,216 00
	Per diem allowance at Fort Jackson, from October 1 to December 31, 1825 .....	184 00
		<u>1,506 16</u>
De Russey, E. R., Captain--	Per diem allowance as disbursing officer, &c., at Mobile Point, from January 1, 1822, to March 31, 1823. ....	1,311 00
	Per diem allowance at Fort Delaware, from November 8, 1823, to January 26, 1824. ....	160 00
	Two and a half per cent. on disbursements at Mobile Point, in March, April, and May, 1824 .....	124 08
	For attendance on court-martial at Annapolis. ....	32 50
	Per diem allowance as disbursing officer at Mobile Point, from July 15, 1824, to August 31, 1825 .....	824 00
	Per diem allowance at Fort Hamilton, from December 1 to 31, 1825 .....	62 00
		<u>2,513 58</u>
Dillahunt, N., Jno, Lieutenant.	Per diem allowance whilst surveying Chesapeake and Ohio canal, from July 30 to October 13, 1823 .....	114 00
	Per diem allowance whilst surveying canal routes from the Ohio to Lake Erie, and from Pittsburgh to Philadelphia, from July 13 to 28, 1824 .....	24 00
	Per diem allowance from April 20 to September 24, 1825 .....	223 50
		<u>361 50</u>
Hunt, F., Thomas, Capt., as quartermaster.	Two and a half per cent. commission on disbursements on account of old claims, made by him in third quarter of 1822 and first quarter of 1823 .....	34 27
	Two and a half per cent. on account of barracks at Baton Rouge, in the fourth quarter of 1823 and first quarter of 1824 .....	168 56
	Two and a half per cent. on account of war claims, fourth quarter 1824 .....	4 55
		<u>207 38</u>
Hook, H., James, Captain, on duty in the office of the Commissary General of Subsistence, at Washington.	Two and a half per cent. commission on provisions purchased in Georgetown and Baltimore between August 17 and October 4, 1822 .....	179 22

## EXTRACT—Continued.

Names and rank.	Purposes, places, and periods.	Amount.
Hook, H., James, Captain— Continued.	Two and a half per cent. commission on provisions purchased at different places between December, 1822, and April, 1823 -----	\$335 28
	Two and a half per cent. commission on provisions purchased for Old Point in Dec. 1823 ----	162 26
	Two and a half per cent. commission on provisions purchased for May and June, 1822 -----	168 84
	Two and a half per cent. commission on provisions purchased for August and Sept. 1823 ----	168 09
	Two and a half per cent. commission on provisions purchased for June, 1824 -----	235 04
	Two and a half per cent. commission on provisions purchased for October and Dec. 1824 ----	332 34
	As witness to a court-martial at Fort McHenry, in September, 1822 -----	14 50
	As witness to a court-martial at fortress Monroe, in August, 1824 -----	34 07
	As witness to a court-martial at New Castle, in August, 1824 -----	56 04
	As witness to a court-martial at Old Point, in August, 1824 -----	39 59
		<u>1,725 27</u>
Kearney, James, Major----	Per diem allowance whilst on the survey of St. Mary's river, Maryland, from June 4 to Aug. 16, 1824 -----	111 00
	On a court-martial at New Castle, in Aug. 1824 -----	55 20
	Per diem allowance whilst exploring a canal route in Pennsylvania, from April 3 to September 30, 1825 -----	231 00
	Two and a half per cent. commission on disbursements in relation to internal improvement, in 2d, 3d, and 4th quarters of 1825 -----	168 15
		<u>565 35</u>
Long, H., Stephen, Major--	Two and a half per cent. commission on disbursements made by him on an exploring expedition on the waters of the Mississippi in the years 1819, 1820, and 1821, allowed in February, 1823 -----	164 41
	Per diem of one dollar and twenty-five cents per day on an expedition on St. Peter's river in 1823 -----	67 50
	Per diem allowance whilst making an experiment for the improvement of the navigation of the Ohio river, from July 6 to October 2, 1824, and from May 22 to November 8, 1825 -----	195 00
		<u>426 91</u>
Maurice, W., Theodore, Captain.	Two and a half per cent. commission on disbursements at Fort Washington in the years 1822, 1823, and 1st and 2d quarters of 1824 -----	1,429 80
	Two and a half per cent. commission on disbursements at Presque Isle in the 3d and 4th quarters of 1824, and 1st, 2d, and 3d quarters of 1825 -----	298 40

## EXTRACT—Continued.

Names and rank.	Purposes, places, and periods.	Amount.
Maurice, W., Theodore, Captain—Continued.	Two and a half per cent. commission on disbursements at Presque Isle in the 4th quarter of 1825-----	\$61 53
		1,789 73
McNeill, G., Wm., Captain.	Per diem allowance whilst surveying the Chesapeake and Ohio canal, from July 5 to October 15, 1824 -----	154 50
	Per diem allowance whilst surveying the Chesapeake and Ohio canal, from April 20 to September 24, 1825-----	346 50
	Two and a half per cent. commission on disbursements made by him in the 1st and 2d quarters of 1825, on account of said canal survey -----	72 99
		573 99
Mansfield, F. K., Joseph, Lieutenant.	Two and a half per cent. commission on disbursements at New York, up to September 30, 1824, on account of fortifications-----	37 76
	Two and a half per cent. commission on disbursements in the 4th quarter of 1824, and 1st and 2d quarters of 1825 -----	11 93
	Per diem allowance as disbursing officer at New Utrecht Point from October 1, 1824, to March 31, 1825 -----	364 00
		413 69
Story, C., Horace, Lieutenant.	Per diem allowance as engineer officer, employed on the Gulf of Mexico, from January 1 to March 31, 1822 -----	121 50
	Two and a half per cent. commission on disbursements at Plaquemine Bend in the 4th quarter of 1822, and first and 2d quarters of 1823, on account of fortifications-----	784 31
		905 81
Totten, G., Joseph, Major--	Extra services as a member of the Board of Engineers from January 1 to April 30, 1822 ----	540 00
	Per diem allowance as disbursing officer at Mobile Point from May 12 to June 11, 1823 ----	62 00
	Per diem allowance as a member of the Board of Engineers at the harbor of Erie from July 28 to September 6, 1823-----	229 50
	Per diem allowance as a member of the Board of Engineers on the Chesapeake and Delaware canal from September 17, 1823, to January 24, 1824 -----	643 60
	Per diem allowance as a member of the Board of Engineers on same service from the 7th to the 22d of May, 1824-----	72 00
	Per diem allowance as a member of the Board of Engineers on internal improvement from June 19 to December 9, 1824-----	783 00



## EXTRACT—Continued.

Names and rank.	Purposes, places, and periods.	Amount.
Totten, G., Joseph, Major— Continued.	Two and a half per cent. commission on disbursements made by him in the 3d quarter of 1823, (collecting materials for Mobile Point)...	\$68 52
	Attending a court-martial at New Castle in March, 1824 .....	115 70
	Per diem allowance as disbursing officer at Brenton's Point from April 1 to December 31, 1825, on account of fortifications .....	550 00
		3,064 32
Tuttle, Stephen, Lieutenant.	Per diem allowance whilst on duty with the Board of Engineers from January 1 to April 30, 1822 .....	165 00
	Two and a half per cent. commission on disbursements on fortifications at New York in the 3d quarter of 1822 .....	48 63
	Per diem allowance whilst surveying Thompson's island, January to April, 1823 .....	142 50
	As acting assistant commissary of subsistence for May and June, 1823 .....	40 00
	Per diem allowance as disbursing officer at Plaquemine Bend from July 1 to January 31, 1824, on account of fortifications .....	430 00
	For issuing provisions at Plaquemine in February, 1824 .....	20 00
	Two and a half per cent. commission on disbursements at Oak island, Cape Fear river, in 4th quarter of 1825 .....	62 80
		908 93
Poussin, T., Wm., Captain.	Amount brought forward .....	217 50
	Per diem allowance whilst engaged on sundry surveys from May 6 to December 10, 1824 .....	174 74
	Per diem allowance whilst engaged on sundry surveys from March 9 to August 4, 1825 .....	260 75
	Per diem allowance whilst employed on the contemplated national road from Washington city to New Orleans from October 22 to December 31, 1825 .....	177 50
	Two and a half per cent. commission on disbursements made by him in 1825 on account of internal improvements .....	117 73
		948 22

Test: W. BRENT, Clerk.

And whereas, afterwards, to wit, on the fourth day of June, in the year of our Lord one thousand eight hundred and thirty-one, the United States, by their attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors, of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court accordingly.

In testimony whereof, I hereunto subscribe my name, and affix the [L. s.] seal of the said circuit court for the county aforesaid, at the city of Washington, this——day of——, eighteen hundred and thirty-ne.

W. BRENT,  
Cltk. Ct. Ct. Dist. Col., City of Washington.

*Writ of error.*

UNITED STATES OF AMERICA, ss —*The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, greeting :*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between the United States of America, plaintiffs, and Thomas Fillebrown, jr., defendant, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court.

Issued the 4th day of June, 1831.

W. BRENT,  
Cltk. Ct. Ct. Dist. Col., City of Washington.

*Citation.*

UNITED STATES OF AMERICA,

*District of Columbia, Washington County, ss.**To Thomas Fillebrown, jr., greeting :*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of August next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said United States as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, chief judge of the circuit court for the District of Columbia, this 4th day of June, 1831.

W. CRANCH.

Service acknowledged by Thomas Fillebrown, jr.

*Copy appeal bond.*

Know all men by these presents, that we \_\_\_\_\_ are held and firmly bound unto Thomas Fillebrown, jr., in the full and joint sum of two hundred dollars, current money, to be paid to the said Thomas Fillebrown, jr., his certain attorney, executors, administrators or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this fourth day of June, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas, lately, at a circuit court of the United States for the District of Columbia, sitting for the county of Washington, in a suit pending in the said circuit court, wherein the United States of America were plaintiffs, and the said Thomas Fillebrown, jr., was defendant, judgment was rendered against the said United States, and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Thomas Fillebrown, jr., citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday of August next.

Now, the condition of the above obligation is such that if the said United States shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void else; to remain in full force and virtue.

Signed, sealed, and delivered, in presence of

[SEAL.]  
[SEAL.]

## IN THE UNITED STATES COURT OF CLAIMS

THOMAS FILLEBROWN }  
 vs. }  
 THE UNITED STATES. }

*Remarks in behalf of petitioner.*

The arguments submitted in the case of Mary Reeside embrace about all we could have to say in the present. Both being the verdict of a jury and judgment of a court, (so far as a judgment could be technically rendered,) upon offset pleaded to a suit instituted by the United States against a citizen, are consequently dependent upon the same principles of constitutional and municipal law. The only difference between the cases consists in the manner in which they originated: the Reeside case being principally for money advanced and negotiated for the use of the government, or for drafts and acceptances of the Post Office Department unpaid, while the present is entirely for service performed. Both cases have also been before the Supreme Court upon writ of error; the one having been dismissed for a failure to prosecute, while the other has been passed upon and affirmed by that tribunal. They therefore stand before you in equal dignity, so far as their legal sanction is concerned, and the arguments we have submitted apply equally to both. We shall consequently feel it necessary to say but little in addition thereto in support of the present.

The record in this case shows that the United States instituted suit against Fillebrown, on May 23, 1829, upon the alleged grounds that he was a defaulter, and had improperly appropriated the government money, to the extent of \$2,700 84, for which sum he was sued in the United States circuit court for the district of Columbia, and required to give bail to discharge the judgment of the court, or surrender his body for incarceration till it was satisfied, or should be pleased to liberate him.—(See the record, p. 5.)

At this stage of the proceedings, the matter was before the government's judicial tribunals, placed there at its own instance.

Fillebrown tells you, that having a dependent family upon his hands to support, and being dismissed from his accustomed employment, and his character stigmatized with the charge of defalcation resting upon it, he found it difficult to procure occupation, or obtain means to relieve the wants of his family, while subject to the prejudice inseparable from one in his situation. And the law being slow in its progress, he resolved to petition Congress to take charge of his case and settle his account; knowing that he was not a defaulter, but that the government justly owed him. Hence, he did, on January 18, 1830, present his memorial to the two houses of Congress, praying their immediate action thereon.—(See amended petition, p. 2.)

But the suggestion being made that his case was in the hands of the judiciary, Congress refused to act; and disappointed, and writhing under the burden of oppressive delay, he was forced to abide the tedious steps of the law. He, therefore, on the first Monday in May,

1830, plead to and joined issue with the government upon its demand.—(See record, p. 5, *suprà*.)

All hopes of any other settlement than a legal contest being then destroyed by the choice and action of the government, the defendant (Fillebrown) proceeded to prepare his facts, to submit before the court and jury when the cause should come to a hearing.

With this object in view, the petitioner had his accounts with the government, as its agent and employé, fully stated and properly vouched, showing his full service and moneyed transactions and disbursements for the department under which he had been acting, and prepared his proof to sustain the same.—(See record, p. 7.)

The case came to a final hearing on May 26, 1831, when the jury, under the instructions of the court, rendered a verdict in favor of Fillebrown, and certified, upon the plea of offset, "*that the United States are indebted to the said Fillebrown in the sum of four hundred and thirty dollars.*"—(See record, p. 12.)

After the rendition of the verdict, the petitioner supposed that the amount ascertained by it to be due him would be promptly paid, and thereupon demanded the same of the Secretary of the Navy; but, much to his astonishment, that officer, instead of satisfying the petitioner's expectations, addressed a letter to the Attorney General, the honorable R. B. Taney, asking his views upon the subject, as to whether it would be legal for him to do so, when the latter functionary, being then the chief law officer of the government, responded in writing, as set forth in the original petition.

The claim not being paid, the petitioner again memorialized Congress on April 3, 1832, but it appears from the documents that he claimed a much greater sum than was allowed him by the jury, and that his prayer for relief was not confined to the verdict alone. This last-named memorial was constantly pressed before the legislative department of the government till December 22, 1848, when it was last presented to the Senate.—(See amended petition, A No. 1, pages 1 to 7.)

Various reports were made upon the memorial as last presented—some for allowing the full amount claimed, and some against it. We perceive but one, however, that was made against the payment of the verdict, but which was not finally acted upon in the Senate.

We concede that it was in the power of Congress to consider the facts, and reject at their pleasure, if they deemed it proper, the amount claimed by the petitioner beyond the sum stated in the verdict, and are, therefore, not seeking to claim anything more than the assessment of the jury.

But we claim that it is equally clear that the sum of \$430, stated in the verdict of the jury, ought to have been paid, and is now due—a fact which neither Congress nor any other tribunal has any authority to question, for reasons we have attempted to elaborate, upon the plainest principles of the Constitution, law, and justice, in the argument we have submitted in the case of Mary Reeside.

This case illustrates the precise ground we have contended for on this particular point in the Reeside case, and which we think is unanswerable in point of authority. That is, when the government sued



Fillebrown, it was proper and legal for him to plead and prove any offset he might have, and that whatever was the finding of the jury, one way or the other, was and is conclusive as to the facts upon the offset so pleaded; and, the jury having rendered a verdict upon those facts for the sum of \$430, it was only competent for the government to examine their finding according to the common law mode—new trial and writ of error. These being exhausted, and the verdict still standing, leaves an established debt of record, ascertained by the highest judicial authority—an authority, created coequal with that granted to Congress, and over which the latter can exercise no appellate or revisory power whatever.

When, however, the petitioner asked for a much larger sum than the verdict of the jury, upon other and distinct facts not passed upon at the trial, it was then the privilege and duty of Congress to consider those facts, and determine whether they meritoriously—but *not as a matter of legal right*—entitled the petitioner to relief; because the facts which were the foundation of the claim, beyond the amount of the verdict, had not been determined upon by the jury, and hence it was no infringement upon, nor impeachment of, the result of their deliberations, and was, therefore, a question which Congress might properly look into.

We think the committee which reported on this claim at 3d session of the 25th Congress took exactly the right views, so far as the questions involving the authority of Congress were concerned, part of which we will here quote:

“In May, 1829, he” (Fillebrown) “was removed from the several offices which he held, and was arrested and held to bail, at the suit of the United States, for a large sum, including the amount which he had been allowed on settlement of his accounts and that which he had retained as compensation for his services as disbursing agent.

“Upon the trial of that suit a verdict and judgment were rendered in favor of the petitioner, and the jury certified a balance of four hundred and thirty dollars to be due him from the United States for his commissions, at the rate of one per cent. upon his disbursements of the funds aforesaid, exclusive of the allowance made to him by the commissioner upon the settlement of his first account.

“He now claims, in addition to that sum, a further compensation of \$3,582, being one and a half per cent. on the whole of his disbursements in said agency. In support of this additional claim he urges the promise of ‘a suitable compensation’ for his services when he entered upon the duties of his agency.

“The committee think the amount charged by the petitioner in his account, which was allowed, and his subsequent claim to retain one per cent., are conclusive of his own understanding of what would be ‘a suitable compensation’ for making the disbursements committed to his charge.

“The evidence in this case establishes the justice of the petitioner’s claim to the sum of four hundred and thirty dollars, and the committee report a bill for his relief.”—(See Report No. 2, 3d session 25th Congress.)

Urging nothing in reference to the merits of Fillebrown’s claim, set

forth in his memorial, beyond the amount stated in the verdict, we think the committee, in making the above report, drew the proper line of distinction touching their constitutional and lawful authority to act; that they had the right to consider the facts as to meritoriousness of the claim beyond the verdict, and to reject the application if they chose, but that they had no right to attempt a reconsideration of the facts upon which the verdict was founded, and that they properly reported a bill for its payment. This, we think, was the true interpretation of the Constitution, and was paying proper deference to the requirements of the 7th amendment, which so emphatically forbids the re-examination of any fact once tried by a jury, as was the case in the rendition of this verdict.

But a most remarkable feature in this case is this: The documents show you that Fillebrown used his utmost endeavors to have it taken charge of by Congress after the suit was brought and he had given bail for his appearance. He did not wish to be subject to the "law's delay," but wished Congress to make immediate inquiry into his conduct, and determine whether he was or was not a defaulter, and, if not, to restore him to his character with an honorable acquittal, and to pay him what he should be able to show the government owed him. But this Congress very distinctly, as well as properly, refused to do. The court was certainly the proper forum in which to dispose of the questions of law and legal rights involved, and Congress determined they should do so. And then, when the results should be so emphatically determined against the government in both circuit and supreme courts, is it not both monstrous and startling to hear it hinted that the decision and verdict of the court and jury should not be respected, or that it was not conclusive?

Fillebrown's memorial, presented on the 18th of January, 1830, was rejected because a suit was pending. He was forced to defend that suit, and a verdict and judgment was ultimately rendered in his favor. Upon that verdict and judgment the United States sued out their writ of error to the Supreme Court, where Fillebrown was again forced to incur the expense of employing counsel to defend his case, when, after a full hearing, the proceedings in the circuit court were affirmed. Certainly, we must suppose that the government, in taking these steps, and imposing such onerous burden upon Fillebrown, meant to abide the result; if not, then the most infamous fraud must have been contemplated by those who conducted the proceedings—a fraud which can never receive the sanction of this court, aside from any constitutional or legal inhibition of the right to review it.

In the record of the trial in the circuit and supreme courts you have all the facts as stated, proven, and passed upon, in those tribunals. The legality of each step, and merits of every fact, have been passed upon and settled. Did the right otherwise exist to review the same, you could not expect to alter the figures and dates before you, which are not even disputed, nor could you expect the oral testimony to be different, were the persons now all living and accessible who gave the same. And were not this the case, could you, under any circumstances, give as much credit to oral testimony in the year 1856, pertaining to facts which transpired in 1830, as you could to the testimony of the

same witnesses, testifying concurrent with the date of these facts, when everything was fresh in their memory? Certainly you could not, and this reason alone should stop further inquiry.

After the rendition of the verdict, and its affirmation by the Supreme Court, the whole question of right, both as to the law and the facts, was wholly determined, so far as there existed or is known to our institutions any authority to re-examine it; nor can there be any reason assigned to the contrary that would not as readily uproot and unsettle every vestige of principle or justice upon which any transaction to which the government may be a party can be founded.

The Solicitor remarks, in the conclusion of his brief, that this case, though trifling within itself, is the forerunner of others of greater magnitude, and that for that reason he attributes great importance to it.

While such an avowal does not reach nor alter the merits of the case in any way, we cannot refrain from remarking that we are aware of none but this and the Reeside judgment which are unpaid, and for the credit of the government we hope there is no more. It would, indeed, be a singular fact if there did exist many verdicts of juries and judgments of the courts against the government unpaid. If there be, there is certainly a radical defect in the administration of justice at work somewhere, or for some cause which the people who support this *republic* are not aware of. We do not believe, so far as we can learn, that there are any others except these two; but, if there were a thousand, they would only constitute so many just demands which the government is most arbitrarily repudiating.

Upon this claim the petitioner insists he is entitled to interest from the date of the verdict on the 26th day of May, 1831.

The only ground upon which we can urge the payment of interest, as a legal right, is the fact that it is the verdict and judgment of a United States court and jury; and which, we think, ought to be sufficient to require it. Upon this subject we respectfully refer the court to our argument, and the authorities cited, upon the payment of interest in the Reeside case. It is a universal principle in the jurisprudence of all civilized governments that the judgments and decrees of their judiciary shall bear interest from the moment of their rendition. We can conceive of no reason why this government should desire to repudiate those plain rules of a law so essential in meting out that "justice" which it is pledged to secure to its citizens, and which alone can enable it to render them "just compensation" for their "private property appropriated to public use."

STEWART & COXE,  
*For Petitioner.*

IN THE COURT OF CLAIMS.—No. 1.

ON THE PETITION OF THOMAS FILLEBROWN.

*Brief of the United States Solicitor.*

This is a claim for \$430, on account of disbursements alleged to have been made by the claimant, some time between the years 1825 and 1829, of navy hospital funds. The petitioner was a clerk in the Navy Department at the time, and in receipt of one thousand dollars per annum salary. The navy commissioners, of which the Secretary of the Navy was the chief, and the Secretaries of the Treasury and War Departments were assistants or advisers, made the claimant secretary of their board, and contracted for his compensation at \$250 per annum. He was afterwards required to pay out funds belonging to the navy hospitals, for which he charged one per cent. commission.

The questions of the power of the commissioners so to employ the claimant, the fact of such employment, the performance of the service, and the rates of compensation, were tried in a suit at law before the circuit court of the District of Columbia, where they were determined for the petitioner, and, on appeal, the decision of the circuit court was affirmed by the Supreme Court. On the principles of that decision, and according to the finding of the jury, the balance claimed by the petitioner was due.

But it is contended for the United States that this Court is not concluded by the finding of a jury or the decisions of any court. This is not an inferior tribunal to the Supreme Court of the United States, but to Congress, and is to be governed in its decisions and course of procedure, not by the decisions of the courts, but by the principles applicable to the legislative body.

All the facts on which this claim is founded must be submitted to this Court, and all the questions passed upon by the courts of law are here again to be considered as open and original questions, as Congress, to which this Court is auxiliary and subordinate, not only has the right to do, but is bound to do before acting.

It was contended, on the hearing of this case before the Supreme Court, that the act of 1797 (United States Laws, p. 512,) repealed so much of the act of 1795 as gave the Comptroller final jurisdiction in the settlement of the accounts of disbursing officers.

This proves nothing in the case before us. It is admitted, that if either the Comptroller or the courts decide that an officer in possession of funds is entitled to keep them, the government cannot compel him to pay them over. Congress has by law committed so much to them, and enabled them to pass authoritatively and finally upon the question of whether there is anything due from the individual to the government; but it has committed no power to either to pass on the alleged indebtedness of the government to an individual. It has not delegated that power, and cannot. By the Constitution, Congress alone can have the ultimate decision of that question. Congress alone can appropriate the public money, and the power of appropriation involves,

of necessity, the duty of considering the propriety or justice of the appropriation, and, therefore, it must investigate the facts and interpret the laws and contracts which occasion the demands for money from the public treasury. This power cannot be delegated by Congress without abdicating its office. It follows, therefore, that whilst Congress may, and unquestionably would, pay great deference to the opinion of the Supreme Court in the interpretation of a law, yet when an appropriation is asked, Congress must interpret for itself. And this Court, instituted by Congress to assist in the investigation of questions involving appropriations, to perform its duty and render the assistance expected from it, must investigate for itself, and judge for itself, and accordingly it is required to present in its report to Congress *the facts* of each case, with its opinion thereon, together with all the evidence and the arguments of counsel. There are cases in which, should Congress fail to appropriate, it would be a virtual dissolution of the government, and the failure would in such cases be a failure in constitutional duty. This remark applies to appropriations for the support of the government according to the plain requirements of the Constitution and the laws; and yet, even in such cases, it is with Congress to judge; and it is only because the duty is so plain, and the laws so explicit in their requirements, that we are enabled to say that Congress would be wanting in its duty if it failed to pass the laws. It belongs to no other branch of the government to define the duties of Congress, or the occasions on which it shall exercise the powers belonging to it, and so it is of the co-ordinate branches of the government. They must in every case judge for themselves within their proper spheres.

It is for the legislature to pass laws, the judges to interpret them when suits arise, and the Executive to execute them. In the performance of these several duties it will often happen that these several departments of the government are called on to interpret the same laws, but the action of each is independent, within its proper sphere. Neither is bound to conform to the opinion of the other, where, by the Constitution and laws, such opinion is not coupled with power to enforce it; and, in the absence of such power, such opinions are entitled to respect so far only as they are supported by reason in the minds of those on whom the responsibility of action is devolved.

I maintain, therefore, it is not sufficient, to authorize this Court to give a favorable judgment for the claimant, that he shall produce and show to the Court the judgment of the Supreme Court on the same legal questions, and the verdict of a jury on the same matters of fact; because, although the opinion and verdict are conclusive on all matters within the jurisdiction of the Court, they are not so as respects the same questions of law and fact arising out of the jurisdiction of the Court; and, therefore, whilst the record of the Court here relied on is evidence which closes and balances the account of the claimant with the Treasury Department, because the law gives that effect to it, it has not such force before this Court; being merely an argument—of great authority I admit—but still an argument which is not conclusive, and which in this case, and many others, has failed to satisfy Congress. The claimant must, then, set forth in his petition the particulars of the service he has rendered, for which he claims compen-



sation, the law which authorizes his employment and compensation, and the amount remaining due and unpaid, which he claims, and not the judgment of a court where he was sued as a debtor, and wherein a portion of the compensation was allowed by the court to set off the indebtedness charged against him.

This claim is trifling in itself, but it is the forerunner of others, involving hundreds of thousands, and therefore I attach great importance to the question I have endeavored to present.

M. BLAIR.

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IN THE COURT OF CLAIMS.

THOMAS FILLEBROWN *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court.

In the year 1829 the United States instituted a suit against the petitioner in the circuit court for the District of Columbia. This suit was so proceeded in that on the 26th day of May, A. D. 1831, a verdict was rendered in favor of the defendant, that he did not assume upon himself in manner and form as the United States had complained, and thereupon the court gave judgment that the United States take nothing by their writ and declaration, and that the petitioner go thereof without day, &c. The jury, at the time of bringing in their verdict, filed in court the following certificate: "The jurors empannelled in the case of The United States *vs.* Thomas Fillebrown, jr., find, upon examining the accounts filed, that the United States are indebted to the said Fillebrown in the sum of four hundred and thirty dollars." No further action was taken thereon by the court.

The petitioner claims the sum of \$430.

The certificate of the jury is no evidence whatever that the amount embraced by it is due the petitioner. The certificate is not a verdict either in form or substance, and the court took no further action upon it than merely to permit it to be filed.

There was, however, evidence submitted to the jury in that case which we think is proper evidence in this case in favor of the original merits of the petitioner's claim. This evidence consists of a deposition of Samuel L. Southard, who is now dead, and documents from the executive departments of the government. The deposition of S. L. Southard is proper evidence, because the case in which it was taken and read was between the parties in this case, and in reference to the same subject-matter, and the witness is dead. The documentary evidence is, in itself, properly admissible in this case.

The case of The United States *vs.* Fillebrown, above mentioned, was carried to the Supreme Court, and is reported in 7 Peters, 28. The principles of the petitioner's claim as it now stands before this Court were settled by the Supreme Court.

The matters in dispute between the parties in the above mentioned suit were as follows:

1. The United States claimed against the petitioner for overcharge

of salary from May 6 to November 7, A. D. 1825, six months one day, at \$250, making \$125 68.

Mr. Southard proves that the petitioner was duly appointed secretary of the board of commissioners of the navy hospital fund, at a salary of \$250 a year; that some time after his appointment, when it was considered proper to keep separate records and files of whatever related to this fund, he was directed to procure the necessary books and make the necessary examinations into the records and files of the navy office and Fourth Auditor's office, and do whatever was required to place the papers belonging to the fund in a proper condition; and that for this service he was allowed to ante date his appointment six months, and to draw a warrant for his salary for that period. Upon this item the Supreme Court remark: "With respect to the \$125 claimed for six months' salary Mr. Southard is very explicit. This allowance, he says, was made for extra services, and related to a time previous to his appointment, and that the allowance had the approbation of the board. This was a service not required or considered by the board as coming within his duty as secretary under his appointment, and a stipulated compensation agreed to be paid him therefor. It is not perceived what possible objection can exist against his being allowed this stipulated sum. Whether or not it was more than a just compensation for his services is a matter which this Court cannot inquire into. Indeed, that has not been pretended, if he is entitled to anything beyond his salary of \$250."—(7 Peters' R., 45.)

2. The United States disallowed the petitioner's claim of one *per centum* on the disbursements made by him as disbursing agent of the board, amounting to the sum of \$2,007 84.

In relation to this item the Supreme Court say:

"With respect to the commissions Mr. Southard says, that subsequent to the appointment of the defendant as secretary the commissioners were enabled, by appropriations and collecting money belonging to the fund from various sources, to proceed to apply the funds to the establishment of navy hospitals, as required by the act of Congress; that these funds were placed in the hands of the treasurer of the United States, as the treasurer of the commissioners; and that, in collecting and disbursing the fund it was found indispensable to have an agent, who should attend carefully to it, and be responsible to the board; that this did not belong to the duties of the secretary, but that it was thought best to give the agency to him on account of his acquaintance with every part of the interest of the fund and his fitness to discharge the duty; that he was appointed the agent with the understanding that he should receive a suitable compensation for the services he should render in that capacity; that it was the understanding of the commissioners that he should receive compensation in the mode and according to the practice of the government in other similar cases; that he is under the impression that this was to be by a *per centage* on the money disbursed, and that he is also under the impression that he did, by the authority of the board, allow one or more of the accounts presented by the defendant, in conformity to the facts and principles he has detailed.

"From this testimony, it is very certain that Mr. Southard consid-

ered the agency of the defendant in relation to the fund as entirely distinct from his duty as secretary, and for which he was to have extra compensation; and it is fairly to be collected from this deposition that all this received the direct sanction of all the commissioners. But whether it did or not, it was binding on the board, for the Secretary of the Navy was the acting commissioner, having the authority of the board for doing what he did, and his acts were the acts of the board in judgment of law. It was, therefore, an express contract entered into between the board or its agent and the defendant; and it was not in the power of the board, composed even of the same men, after the service had been performed, to rescind the contract and withhold from the defendant the stipulated compensation. There is no doubt the board composed of other members had the same power over this matter as the former board. But it cannot be admitted that it had any greater power. The rejection, therefore, of these claims of the 7th of September, 1829, after all the services had been performed by the defendant, can have no influence on the question.”—(7 Peters R., 46, 46.)

Again: “The authority of the commissioners to appoint a secretary has not been denied; and this same authority must necessarily exist to appoint agents and superintendents for the management of the business connected with the employment of the fund; and which, in the absence of any regulation by law on the subject, must carry with it a right to determine the compensation to be allowed them.”—(7 Peters R., 44.)

Again: “If the board had authority to employ the defendant to perform the services which he has rendered, and these services have been actually rendered at the request of the board, the law implies a promise to pay for the same.”—(7 Peters R., 48.)

We follow the views of the Supreme Court as to the effect of Mr. Southard’s testimony, and are, of course, bound by the principles of law established by that court.

The first item above mentioned was.....	\$125 68
The second item above mentioned was.....	2,007 84

Making a total of.....	2,133 52
From which the United States deducted for salary from 6th February, A. D. 1829, to the 16th of May, A. D. 1829, which had not been charged in the account rendered by the petitioner, three months eleven days.....	70 14

Leaving a balance claimed by the United States of.....	<u>2,063 38</u>
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The petitioner on his part insisted that he was entitled to his salary, and in addition thereto to a commission of one per centum on his disbursements. He therefore claimed as follows:

(1.) His salary from February 7 to May 16, A. D. 1829, three months ten days, at \$250 a year. (This the government conceded to be just, and allowed, therefore, as above stated, \$70 14).....	\$69 36
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(2.) Commissions on the following disbursements, at one per centum:

1829, March 3. To T. Newton, for land .....	\$9,000	
April 4. To J. Haviland, (advance) .....	10,000	
April 14. To W. Stickland, (advance) .....	10,000	
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	\$29,000	\$290 00

The testimony of Mr. Southard and the documentary evidence show that these disbursements were made by the petitioner as the disbursing agent of the board.

(3.) For short charge of commissions in account rendered March 2, A. D. 1829, to wit:

On \$207,848 48, at one per cent .....	\$2,078 48	
Deduct amount charged and received .....	2,007 84	
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		70 64
Making his whole claim the sum of .....	\$430 00	
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The documentary evidence shows that besides the above mentioned sums paid to T. Newton, J. Haviland, and W. Stickland, respectively, the petitioner disbursed also the above named sum of \$207,848 48.

It is apparent, therefore, that the only matters really in dispute between the parties were (1) the above mentioned sum of \$125, and (2) the commissions claimed by the petitioner; and that if the petitioner was entitled to these two items, he is now entitled to the above mentioned sum of \$430, the amount claimed by him.

That the petitioner was entitled to the above named sum of \$125 is clear, we think, beyond dispute.

It is equally clear, too, from the evidence in this case and the legal principles adjudicated by the Supreme Court, that the petitioner was entitled to a commission of one per centum on the disbursements made by him as the disbursing agent of the board.

We are therefore of the opinion that the petitioner is entitled to relief, and shall report to Congress a bill in his favor for the sum of \$430.